

Holly Cartner

HUMAN RIGHTS WATCH WORLD REPORT 1992

Events of 1991

Human Rights Watch

485 Fifth Avenue
New York, NY 10017-6104
Tel: (212) 972-8400
Fax: (212) 972-0905

1522 K Street, NW, Suite 910
Washington, DC 20005-1202
Tel: (202) 371-6592
Fax: (202) 371-0124

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Human Rights Watch

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We dedicate the 1992 Human Rights Watch World Report to the memory of Sophie C. Silberberg, a cherished colleague who died on August 24, 1991 at the age of 78. Sophie's energy, acumen and warmth were pivotal in the growth of Human Rights Watch from the Fund for Free Expression — of which she was executive director from 1978 to 1990 and vice-chair at the time of her death — to the worldwide monitoring organization of the scope and impact reflected in these pages.

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PREFACE

For the past nine years, Human Rights Watch has published a report surveying the U.S. government's human rights policy in many of the countries that we monitor. For the last two years, we have also included an analysis of human rights developments in those countries. This year, we have added a discussion of each country's respect for the right to monitor human rights conditions. Finally, each chapter contains a description of Human Rights Watch's work in promoting human rights in that country.

This survey covers 57 countries, spanning every region of the world. The list of countries reviewed is not a comprehensive inventory of all governments that commit serious abuses of human rights, nor is it a catalogue of every nation in which U.S. human rights policy warrants analysis. Rather, it reflects the countries where Human Rights Watch has devoted its greatest energies — an allocation which in turn reflects the seriousness of abuses, our access to information, our ability to influence human rights practices, our priority in maintaining a balance in our work cutting across various significant political and other divisions, and our limited and often strained resources. Within each country as well, the issues covered do not necessarily span the scope of human rights abuse, but reflect areas to which Human Rights Watch has devoted its attention.

A compilation of this magnitude is a joint effort involving a large number of people, including the entire research staff of Human Rights Watch. The contributors were: Aziz Abu Hamad, Cynthia Arnson, Cynthia Brown, Holly Burkhalter, Mary Jane Camejo, Holly Cartner, Allyson Collins, Catherine Cosman, Alex de Waal, Rachel Denber, Martha Farmelo, Liesl Fitchard, Janet Fleischman, Lisa Fleischman, Robert Goldman, Eric Goldstein, Patricia Gossman, Jeannine Guthrie, David Holiday, Nicola Jefferson, Michael Jendrzeczyk, Sidney Jones, Robert Kimzey, Jeri Laber, Gara LaMarche, Ellen Lutz, Anne Manuel, Juan Mendez, Robin Munro, David Nachman, Aryeh Neier, Ivana Nizich, Rakiya Omaar, Jiwon Park, Ben Penglase, Patricia Pittman, Dinah PoKempner, Clifford Rohde, Kenneth Roth, Karen Sorenson, Thant Myint-U, Dorothy Thomas, Julie Triedman, Joanna Weschler, John White, Andrew Whitley and Lois Whitman. Scott Turner contributed immensely by managing the physical production of the volume. The report was edited by Kenneth Roth.

INTRODUCTION

Nineteen ninety-one was a year in which the discourse of human rights gained greater acceptance than ever before. The tired formula that the way governments treat their own citizens is an internal affair, not the appropriate subject of international discussion, lost resonance even among the governments most resistant to international scrutiny. Even so sacred a notion as the inviolability of borders — the essence of sovereignty — gave way to a growing insistence that the most extreme abuses could not remain immune from humanitarian intervention. Several efforts to fashion peace also reflected the emerging recognition that human rights must be at the center of a secure and stable world order.

Despite this increased acceptance, however, respect for human rights faces a dangerous challenge in the rise of exclusionary ideologies. Now that the Cold War's proxy conflicts are winding down, the quest for ethnic, linguistic or religious purity, pursued by growing numbers, lies behind much of today's bloodshed. By closing the community to diversity and stripping outsiders of essential rights, these dangerous visions of enforced conformity nourish a climate of often brutal intolerance.

At the same time, democracy itself faces an important challenge. Just as the breakup of the Soviet Union finds opponents of totalitarianism pronouncing victory, more and more governments are attempting to claim that they are democratic merely because they hold periodic elections. Fearful of the unrestrained exercise of the freedoms of speech and association, such governments have sought to cripple the institutions of civil society that might provide a vehicle for an organized challenge to their power.

It is a source of disappointment that the Bush Administration has responded to these challenges by downgrading the significance of human rights in the formulation of U.S. foreign policy. On occasion, when other interests did not stand in the way, the Administration defended human rights. Examples include Bulgaria, Honduras and Suriname, where the Administration has spoken out against human rights violations, and Burma and Kenya, where it backed such criticism with economic sanctions. But when competing interests arose — conducting business with China, fighting drug-trafficking in Peru, maintaining warm relations with Saudi oil sheikhs, pursuing a limited vision of Arab-Israeli peace, or avoiding politically embarrassing questions about why the United States

went to war to restore the Kuwaiti emir — human rights took a back seat at the White House.

The sad irony is that this policy of devaluation has become entrenched at a time when U.S. influence is exceedingly high. Rather than use that influence to insist that human rights are a critical element of a "new world order," the Administration maintains a short-sighted vision of national interest, too ready to sacrifice the pursuit of human rights if it is not cost- and conflict-free.

Sovereignty and Human Rights

Fortunately, the worldwide trend was in the opposite direction, with increasing acceptance that respect for human rights is a legitimate international concern. The most dramatic example of the breakdown of sovereignty as a defense for human rights violators occurred when the U.N. Security Council authorized the creation of a security zone in northern Iraq to protect the Kurdish population from massive reprisal by Saddam Hussein's forces. The action represented the first time that the international community had formally limited a sovereign nation's authority over its own territory essentially on human rights grounds.

But sovereignty gave way to human rights in a number of less dramatic ways as well.

- o The Organization of American States (OAS), traditionally a staunch defender of sovereignty after decades of big-stick U.S. diplomacy in the hemisphere, resolved in June to convene immediately if any democratically elected government were overthrown in a military coup. The first test came in late September, with the ouster of Haiti's first freely elected president, the popular and populist Jean-Bertrand Aristide. The OAS responded with unprecedented resolve, imposing an economic embargo and vowing to maintain it until President Aristide is restored to power.
- o In September, in the face of a disintegrating situation in Yugoslavia, the thirty-eight-state Conference on Security and Cooperation in Europe (CSCE) dropped its traditional insistence on unanimity to permit the sending of a human rights fact-finding mission to a member state without securing the state's formal consent.

- o An armed force created by the Economic Community of West African States continued its intervention between the warring factions in Liberia. Begun in August 1990, this military presence and subsequent diplomatic efforts were critical in curbing the carnage and abuse of that conflict.
- o The U.N. General Assembly in November took the unprecedented step of unanimously adopting a resolution rebuking by name a member state — Myanmar (Burma) — for human rights abuses. The lack of dissent meant that even such hard-line opponents of international scrutiny as Cuba and China did not oppose the emerging consensus. Indeed, China felt it necessary to issue a White Paper on its own human rights practices which at least gave lip service to the legitimacy of human rights as a topic of debate.
- o Then-Soviet Foreign Minister Boris Pankin, in his September speech to the Moscow CSCE conference, explicitly rejected the long-time Soviet position that international criticism of its human rights record constituted interference in its internal affairs.
- o The European Community and several of its member states have announced that development aid would be linked to the recipient government's respect for human rights. Even Japan, long resistant to the notion, has articulated a similar policy.

There were, of course, exceptions to this trend. The Organization of African Unity continues to refuse to take up human rights violations by its member states, and to diffuse international efforts to scrutinize abuses by those states. The Association of Southeast Asian Nations (ASEAN) was outspoken in its hostility to international human rights scrutiny. The fifty-nation Commonwealth made substantial reference to human rights at its 1991 heads-of-government meeting but continued to neglect the matter in practice.

Still, a trend could be discerned throughout the year of significantly greater acceptance of human rights as a legitimate topic of international concern. Given the violent disintegration at year's end of Yugoslavia and Somalia, there in all likelihood will be a continuing need to examine whether sovereignty can be a basis for forgoing international efforts to prevent major human rights abuse.

Human Rights as an Element of Peace and Stability

Human rights also gained growing recognition as a vital element of peace and stability. The realpolitik view of world order in which relations between states are determined by power and self-interest, without concern for such "internal" matters as how a state treats its citizens, gave way fitfully but steadily to a broader understanding that security is not simply a question of armed might but depends on a foundation of respect for human rights. The need to readjust this understanding became increasingly apparent with the August 1990 invasion of Kuwait. If the international community previously had challenged Saddam Hussein to temper his cruelty at home, it seems doubtful that he would have risked brutalizing the citizens of a neighboring state.

The recognition that respect for human rights promotes peace shaped international policy in several countries in 1991. The most significant efforts were in El Salvador, where peace talks have proceeded with the increasing acknowledgment by both sides that respect for human rights must be established after more than a decade of large-scale abuse. Even while the conflict continues, a team of more than one hundred U.N. observers has spread throughout the country to monitor human rights. A "Commission of Truth" has been named and will be established in 1992 to investigate and acknowledge the major human rights abuses of the past decade. Another commission is planned to review the records of senior army officers with an eye toward purging human rights violators after a peace settlement. These developments represent an understanding that peaceful reconciliation cannot be achieved without confidence by all sides that their human rights will be respected after they lay down their arms and that the most serious abuses of the past will not be forgotten.

Colombia also put into practice an understanding of the relationship between human rights and security. Tremendous strides were made in ending Colombia's multiple guerrilla wars by opening the political process to encourage participation by former rebels. The process has been marred — a presidential candidate representing a former guerrilla group was murdered in 1990 — but former guerrillas elected in 1991 played a major role in drafting a new constitution. The revised charter contains several important measures for curbing the killing and disappearances that have plagued the nation.

Other countries have shown a recognition that lasting peace can be achieved only in tandem with respect for human rights. As a critical part of their peace accords, Angola and Cambodia vowed to hold competitive

elections, with an opportunity for all parties to organize and speak out without interference. The peace agreement in Ethiopia included a pledge to facilitate international human rights monitoring.

Unfortunately, the long-awaited Middle East peace talks between Israel and its Arab neighbors appear not yet to have taken cognizance of the importance of human rights. Neither the security that Israel desires nor the expandable autonomy sought by the Palestinians can be achieved without new respect for human rights on both sides of the Arab-Israeli divide. The open dissent and free public debate needed to resolve current and future disputes will not be possible if political opponents can be detained without trial as "terrorists" by the Israelis, threatened as "capitulationists" by the Palestinians, imprisoned as "traitors" by the Syrians, or arrested and tortured for expressing "anti-state" ideas by the Egyptians.

Exclusionary Ideologies

Even as the growing acceptance of human rights has begun to alter understandings of peace and sovereignty, the rise of exclusionary nationalism poses an alarming threat to individual liberties. Doctrines of intolerance — be it a vision of ethnic, linguistic or religious purity — are apparent in a variety of conflicts around the world. Several of these are in Eastern Europe: the interethnic attacks in Yugoslavia; and the violent confrontations in such regions of the former Soviet Union as Georgia, Azerbaidhzan, Moldova and the Chechen-Ingush region of Russia. More restrained ethnic tensions continue to raise the specter of violence as Turks in Bulgaria, Hungarians in Romania, and Gypsies in several countries face intolerance from the majority population.

Many have described the resurgent nationalism in Eastern Europe as a pot of simmering ethnic tensions that was waiting to explode once the lid of Communist rule was removed, as if one should be grateful to totalitarian rule for keeping the lid on so long. That view overlooks the tremendous contribution to these tensions by Communist rule itself — a contribution with parallels in authoritarian regimes of various political stripes around the world.

Far from relieving ethnic hostilities, the violation of human rights under Communist rule fueled these tensions. The assertion of ethnic identity is hardly surprising after years of denial of the basic rights to practice one's religion, speak one's language, or celebrate one's culture.

Nor does it help to ease ethnic tensions when an unresponsive bureaucracy of one nationality rules members of another ethnic group.

The explosion of destructive nationalism also reflects the devastation of institutions that might have allowed the tensions of political and economic transition to be resolved peacefully. Societies steeped in democracy enjoy the opportunity to resolve these strains through public debate and political compromise. But authoritarian traditions have fostered a strong tendency toward absolutism.

In addition, dictatorial rule, sometimes built on the deliberate exploitation of ethnic rivalry, has stifled the independent institutions of civil society that might have provided a sense of community beyond the ethnic, linguistic or religious group. Fearful and isolated individuals, without a history of free expression and association to find common solutions, have tended to fall back in time of fear on more traditional identities.

A history of dictatorial rule also lies behind the ethnic conflict in South Africa. The divide-and-conquer strategies of apartheid, ranging from the cynical homeland policy to the restrictive pass system, stand behind the sense of isolation and despair reflected in the black-against-black political violence of recent years. The violence has been fueled by radical defenders of apartheid — including government forces — who have chosen to spill vast quantities of blood rather than give up the prerogatives of a racist state. The denial of democratic institutions to the black majority also has made it difficult to establish the trust needed to build a representative state and remedy the injustices of apartheid.

A legacy of abuse and the denial of democratic means for resolving grievances lie behind a host of other ethnic conflicts.

- o In Sri Lanka, the Sinhalese-dominated government's intolerance of the Tamil language and perceived Tamil privileges has bred a vicious war with untold brutality by insurgent and government forces.
- o In India, government heavy-handedness in addressing separatist rebellions in Punjab, Assam and Kashmir has promoted a cycle of cruelty and violence by all sides.
- o In Indonesia, an entrenched and intolerant authoritarian regime has met separatist movements in Aceh and East Timor with summary executions and widespread repression.

- o In Tibet, the Chinese have imposed their territorial claims through ruthless crackdowns on pro-independence demonstrators.
- o In Iran, the struggle of the country's Kurdish and Baluch minorities for greater political, cultural and linguistic autonomy has met with heavy-handed repression usually masked as an anti-drug campaign.
- o In eastern Turkey, the government's long repression of the Kurdish minority has stoked the flames of insurgency.
- o In Rwanda, Hutu domination of the Tutsi minority (after years of the reverse) has sparked another invasion by predominantly pro-Tutsi forces and reprisal killings by government forces.
- o In neighboring Burundi, war broke out in November when pro-Hutu rebels attacked after years of discrimination by the dominant Tutsi minority.

One dangerous manifestation of this nationalist fervor is the tendency to deny members of other ethnic groups any status in the nation. Loss of citizenship rights and summary expulsion is often the product of this exclusive view of the nation.

- o Ethnic Haitians who were lifelong residents of the Dominican Republic and should be considered citizens under the Dominican Constitution were summarily expelled in retaliation for international criticism of the Dominican government's use of forced Haitian labor on state sugarcane plantations.
- o The Kuwaiti government, after the ouster of Iraqi occupying forces, expelled or prevented the return of hundreds of thousands of long-term Palestinian residents because of alleged pro-Iraq sympathy. It is also threatening to expel some 250,000 stateless Arabs, the Bedoons, whose only home is Kuwait but whose Kuwaiti citizenship has never been officially recognized.
- o Saudi Arabia summarily expelled close to a million Yemenis, most of them long-term residents, after Yemen was perceived as siding with Iraq during the Persian Gulf conflict.

- o Latvia is threatening to deny citizenship to anyone who cannot trace his or her ancestry in Latvia to 1940 or demonstrate residence in the country for sixteen years.
- o Predominantly Buddhist Burma continues to detain Muslims born in Burma as "illegal immigrants."
- o Eritrea, following the end of the Ethiopian conflict, has expelled thousands of non-Eritreans.
- o Congo summarily expelled hundreds of thousands of Zairians, many of them long-term residents, to politically unstable conditions in Zaire.

Nationalism is not the only exclusionary ideology that threatens respect for individual differences. A similar intolerance can be found in Saudi Arabia, Sudan and Pakistan, where governments invoke an extreme version of Islamic fundamentalism to suppress dissent and stifle the development of civil society, or in the continuing death sentence pronounced by Iran's theocratic state against writer Salman Rushdie. Elements of the Afghan *mujahedin* also have used detention and murder to enforce their rigid brand of Islamic fundamentalism. In turn, some governments, notably Egypt, Algeria and Tunisia, have fueled the growth of religious extremism by using repressive methods, including torture, rather than encouraging public debate and the growth of alternative independent institutions to challenge intolerant fundamentalist ideologies.

A Threat to Democracy

Apart from the threat of exclusionary ideologies, civil society is also endangered by attacks on the very nature of democracy. Although most governments today claim to be democratic, an increasing number have sought to redefine the term as a form of narrow electoralism, with periodic balloting but without the independent institutions of civil society — a free and robust press, outspoken bar associations and religious institutions, freely organized labor unions and uninhibited grassroots organizations — that permit people to debate issues of importance and to organize and petition their governments in a manner that permits them to be heard.

There have been important exceptions, such as Zambia's transition from one-party rule after an open and highly competitive campaign. Although President Kenneth Kaunda was defeated at the polls, ending over two decades in power, his wisdom in permitting outspoken political parties and an unrestrained press does more than all his years in office to ensure him a place in history as a contributor to Zambia's emerging democracy.

With disturbing frequency, however, elected leaders wedded more to power than democracy have sought to quash independent institutions that might transform periodic elections into a genuine challenge to their continuation in office. The form of this token electoralism varies from country to country. But it seems always to reflect a conviction by the leadership of the day that it possesses a monopoly on the wisdom needed to guide the nation, and a convenient belief that nongovernmental institutions should either stay out of politics or avoid public disagreement with the chosen path of the head of state.

Such perversion of democracy has emerged in many nations that adhere to the democratic form of periodic elections.

- o The Egyptian government dissolved a leading women's organization because it dared to "disseminat[e] ideas running counter to the position of the State" and to "[take] a stand against the official and public stand of the government with regard to the invasion of Kuwait by Iraq." The government also warned students that "[u]niversities are a place for science and learning and not for political activity."
- o In Singapore, the government has reduced political competition to a brief campaign period every four or five years, while using the threat of administrative detention and a variety of more subtle economic penalties to stifle the growth of independent organizations. When the opposition overcame these obstacles to win four of fifty-one parliamentary seats, the government announced that it had been mistaken to attempt a slightly more open form of governance.
- o In South Korea, the government detains people suspected of "anti-state" ideology. Debate on the central issue facing society — relations with North Korea — must take place under the shadow of possible criminal charges of "benefiting" the north.

- o In Indonesia, political discussion is constrained by the ever-present possibility of detention for violating the state ideology.

This narrow electoralism can also be found in several nations that have declared themselves on the road to democratic reform. In Kuwait, for example, the restored emir has promised elections in 1992 but refuses to permit campaigning by relaxing censorship and lifting prohibitions on independent organization and assembly. Similarly in several countries in Africa, governments are trying to sway with the winds of democratic change without losing their grasp on power.

- o In Nigeria, the military government is attempting to control a proclaimed transition to democracy by dictating which two political parties may exist, undermining the press, and insisting on an "open ballot" in which voters must publicly identify their choice.
- o In Kenya, despite a long-awaited opening for multiparty politics, outspoken lawyers and politicians have continued to face fines, arrest and mistreatment in custody for challenging the government's insistence on its monopoly on power.
- o In Cameroon, elections have been promised but six independent organizations were banned for engaging in politics.
- o In Ghana, the government has declared a transition to democracy but still bans political parties and targets opposition journalists for harassment.

Equally critical to a democracy is the rule of law, but again many "democratic" nations show little tolerance for legal process.

- o In Malaysia, the ruling party, after taming the judiciary through suspension and dismissal of independent-minded members of the Supreme Court, set its sights on the Bar Council, briefly threatening to revoke its independence and limit its public voice because of its vigorous defense of the rule of law.
- o In El Salvador, the government has allowed abusive forces to face prosecution and, occasionally, trial in cases that attract international attention, confident that efforts to repress evidence and manipulate

the judiciary will usually avoid conviction and punishment, and that in any event, the sporadic nature of these prosecutions coupled with amnesties for those who face punishment will not substantially dent the pattern of impunity enjoyed by security forces.

- o In Guatemala, a handful of judges, police officers and human rights monitors willing to pursue military abuses have been met with threats and murder.
- o In a number of nations around the world — including Egypt, India, Israel and Malaysia — avowedly democratic governments have bypassed the criminal law altogether by detaining dissenters administratively, without specific charges or a public trial before an independent tribunal.

A similar bypassing of judicial institutions affects certain prisoners in the United States. After conviction and sentencing in court, prisoners who are deemed to present excessive security threats are confined administratively, without further judicial review, in severe and often cruel super-maximum security facilities.

Some attacks on democracy did not bother with subtleties. Military coups in Thailand in February and in Haiti in September overthrew popularly elected governments. An effort by an interim government in Togo to plan elections after twenty-four years of military dictatorship faced open challenge beginning in late November by the armed forces, forcing the interim prime minister to agree to share power with the former despot to avoid further bloodshed.

Other governments — especially in Asia — still make no pretense of adherence to democracy.

- o Despite its professed acceptance of the legitimacy of discussing human rights, China persists in its brutal effort to stamp out any remnant of the "counterrevolutionary" pro-democracy movement of 1989. More than a thousand peaceful participants in the movement are known to remain in custody.
- o In Burma, the military-dominated State Law and Order Restoration Council continues to ignore the results of the May 1990 elections, imprison the leaders of the victorious National League for Democracy (NLD), and hold Nobel Prize-winner and NLD leader Aung San Suu

Kyi under house arrest.

- o In Vietnam, despite economic liberalization and a small opening for dissent, those who overstep prescribed bounds still face imprisonment and severe mistreatment in custody.
- o In North Korea, repression is so tight and the country so closed that public dissent remains virtually unthinkable.
- o In Cuba, persistent opposition to Fidel Castro's closed political system has been met with continuing arrests and violent "acts of repudiation," in which government-organized mobs batter and abuse dissident leaders.
- o In Malawi, Life President Hastings Banda, who has dominated political life since independence in 1964, maintains a highly repressive system that has permitted him to remain immune to the democratic tide sweeping Africa.

U.S. Policy: Human Rights at No Cost

In the face of these varied and sometimes complex challenges to human rights, the Bush Administration has tended toward a policy of promoting human rights only when it is cost-free. The Administration is not openly hostile to human rights, and sometimes becomes an outspoken proponent, but these occasions are usually only when competing interests do not stand in the way. The promotion of human rights rarely has emerged as a concern that overrides the Administration's other preoccupations.

Much of the blame for this devaluation of human rights rests with President Bush himself. His preference for personal diplomacy among national leaders seems to have left little room for the embarrassment and possible affront that human rights criticism can cause. But the problem also appears to reflect a lack of profound concern with human rights by Secretary of State James Baker, whose personal interventions seldom address human rights matters.

The Middle East

The crucible of the Bush Administration's human rights policy in 1991 was the Middle East. President Bush cited Iraqi abuses of human rights in rallying support for a military solution to the invasion of Kuwait. Yet as soon as the war was over, the cry for human rights was lost in the rush of other considerations. Indicative was that Secretary Baker visited the region seven times in 1991 without once publicly mentioning human rights.

The pattern, begun the year before as the Administration ceased human rights criticism of governments willing to join the anti-Iraq coalition, continued in the course of the Gulf war. As U.S. troops occupied a broad swath of southern Iraq and began unprecedented efforts to discover and destroy Saddam's weapons of mass destruction, the Bush Administration waffled on whether to ground the Iraqi helicopter gunships that were helping to butcher participants in the anti-Saddam uprising. Fear of Iranian influence in southern Iraq and of Kurdish unrest bordering Turkey led the Administration to countenance the massacre of the insurgents and their kin rather than risk a shift in power in Iraq.

Throughout the year, the Administration led the hard-liners at the United Nations in maintaining the tightest possible embargo on Iraq. Although in August the Security Council allowed Iraq to sell oil to generate the revenue needed to purchase food, it insisted on strict control of the revenue so that Saddam Hussein would not reap the political benefits of distributing food. When the Iraqi president balked, no oil sales proceeded. Since the Administration made clear that it would not lift the sanctions until Saddam was removed, the Iraqi people remained the innocent victims of a heartless strategy designed to encourage them to rise up out of sheer desperation against a leader who will stop at no atrocity to preserve his hold on power.

President Bush also trivialized the atrocities of the Iraqi regime by personalizing his dispute with Saddam. "We'd be perfectly willing to give the military another chance," he said in July of the security forces that are responsible for the summary murder of hundreds of thousands of innocent Iraqis, "provided Saddam Hussein was out of there." In his quest to remove Saddam — a potent symbol in U.S. domestic politics — President Bush seemed to countenance a simple substitution of dictators that would leave the Iraqi people saddled with a new Saddam.

In liberated Kuwait, the Administration was equally weak in preventing the sorts of abuses that it had cited as a prelude to going to war. The thousands of U.S. troops in the country played an active role in rebuilding Kuwait's ruined infrastructure — even preparing a palace for the emir's return — but adopted a hands-off attitude when it came to preventing vengeful Kuwaiti forces from executing scores of perceived Iraqi sympathizers and torturing hundreds more.

Evidently worried that public criticism of the restored Kuwaiti government would tarnish the Desert Storm military victory, the Administration acted as the foremost apologist for the emirate, rebutting human rights criticisms and actively seeking to deflect attention from Kuwaiti abuses. There were no public calls to punish those responsible for murder and torture, to release or retry those convicted of "collaboration" after farcical trials, or to stop the summary deportation of refugees and stateless residents of Kuwait. Fear of antagonizing other U.S. allies in the region — notably Saudi Arabia — also prevented the Administration from lending firm support to calls by Kuwaiti pro-democracy forces for an end to restrictions on the freedoms of expression and association.

President Bush visited Turkey, an important ally in the Gulf war, in July, the first visit to the country by an American president in thirty years. Rather than publicly criticizing pervasive torture, bans on the press and independent associations, the arrest of journalists, and attacks on human rights monitors, President Bush called Turkey his "second home" and noted how much he valued Turkey's "commitment to democracy."

Fear of the political cost appeared to lie behind the Administration's flat unwillingness to engage in any critical examination of its own war record. The Pentagon's interim report on the war, released in July, was as much a whitewash as its television footage released during the war of bombs hitting Iraqi military targets with pinpoint precision. Neither reflected the deaths of some 2,500 to 3,000 civilians as a direct consequence of the bombing, roughly one-third of which were attributable to deliberate allied decisions that flouted the laws of war.

The submersion of human rights concerns continued as the Administration organized the Arab-Israeli peace talks. Promising to take part in the talks became a virtual shield against public criticism from the Administration for human rights violations. As he addressed the Madrid peace conference on November 1, Secretary Baker made not one reference to human rights.

One ostensible justification for the silence was fear of compromising the U.S. role as arbiter. But even-handed criticism of all regional violators

would hardly have undermined U.S. neutrality. Israel did come in for occasional criticism of its settlement policy, but only because the policy was an "obstacle to peace," not because of the discriminatory treatment of Palestinian residents and confiscation of their land that the settlements represent, let alone for the illegality of the settlements under the Fourth Geneva Convention. The result was to encourage Israel to treat the settlements as a matter for negotiation rather than as a violation of human rights that should be stopped unconditionally.

Other Devaluation of Human Rights

The Administration's devaluation of human rights was apparent elsewhere in the world as well. President Bush continued to insist on a policy of "constructive engagement" with China despite glaring and persistent evidence of its failure. In May, he labeled the argument that the United States should distance itself from China's abusive leadership as "self-righteousness draped in a false morality." "You do not reform the world by ignoring it," he proclaimed, as if no degree of killing or repression made a regime immune from the Kissingerian realpolitik of U.S. diplomats. Rather than even considering the use of trade sanctions, President Bush ensured the Chinese leaders understood that their friend in the White House would block any more severe sanction than a private finger-wagging for their continued imprisonment and mistreatment of democracy advocates.

Until the failed August coup in the Soviet Union, the Administration was preoccupied with the survival of the center to the point of disregarding the principle that any political arrangement should be based on respect for human rights. Long after Soviet President Mikhail Gorbachev changed from a champion of openness to a proponent of centralized and if need be repressive control, the Bush Administration seemed exclusively concerned with his political survival. For example, the Administration refused to assess Gorbachev's role in the violence in January against peaceful independence advocates in Lithuania and Latvia — despite substantial evidence that it was centrally directed — and failed even to attend congressional hearings on the crackdown out of evident fear of undermining Gorbachev. The Administration's vacillation on human rights squandered the possibility of having some influence in this time of turmoil.

In Colombia and Peru, the Administration's eagerness to funnel military aid to the "war" on drugs led it to issue blatantly false certifications about human rights conditions. The denial that the army of either country was engaging in a consistent pattern of gross abuses flew in the face of extensive evidence, much of it recorded in the State Department's own annual report on human rights. In Colombia, this insensitivity to human rights worked at cross purposes with the increasing responsiveness to human rights concerns shown by that country's own civilian government. In Peru, the Administration's position threatened to make the United States a party to a counterinsurgency campaign carried out by means of dirty-war tactics.

Some Positive Steps

There were occasional positive steps that the Administration took to promote human rights.

- o With Honduras no longer serving as a staging point for the Nicaraguan *contras*, the new U.S. ambassador, Cresencio Arcos, is a leading proponent of accountability for army abuses. He called for a "transparent" investigation into a particularly brutal army rape and murder, and brought in the U.S. Federal Bureau of Investigation to help with forensic analysis.
- o As Cold War competition waned in the neighboring Horn of Africa, U.S. Ambassador to Kenya ~~Smith~~ Thompson received backing for his blunt and outspoken advocacy of multiparty democracy and strong opposition to the arrests and mistreatment used to preserve one-party rule.
- o In Burma, the Administration maintained tight restrictions on high-level diplomatic contacts and refused to resume bilateral assistance. Secretary Baker also spoke out forcefully against Burmese abuses at an ASEAN meeting.
- o In Suriname, following the military overthrow of an elected government in December 1990, the Administration continued in 1991 to issue high-level public calls for new elections, which were held in May 1991, and for an end to the military interference in civilian

government that has been the rule in that country for a decade.

- o In Bulgaria, despite warming relations, the Administration spoke out publicly against constitutional restrictions on ethnically and religiously based political parties.

Welcome as these interventions were, they had in common the lack of substantial U.S. interests standing in the way of human rights advocacy. As a result, they regrettably did not mark a deviation in the Administration's policy of subordinating the promotion of human rights to a range of other concerns.

Haiti represented both the height and depth of the Administration's policy of promoting cost-free human rights. Even though the December 1990 elections had brought to power President Jean-Bertrand Aristide, a man with ideological views considerably to the left of the Administration, Assistant Secretary of State for Inter-American Affairs Bernard Aronson and U.S. Ambassador Alvin Adams played a critical role in supporting the electoral results and blocking a coup attempt in January 1991. Ambassador Adams also helped to save President Aristide's life when a brutal military coup overthrew him in September. In the following month, the Bush Administration denounced the army's atrocities and joined the OAS in pressing for President Aristide's return.

Yet, once Haitians began fleeing the violence and turmoil in large numbers, the fear of a wave of Haitian refugees on U.S. soil led the Administration to begin sending the Haitians back, after cursory review of potential claims for asylum, to the ruthless regime controlling Port-au-Prince. When a U.S. court barred this violation of the international prohibition of *refoulement*, the Administration obtained a reversal on appeal by claiming that there was no right under U.S. law to challenge the Haitians' return. The view that any inadequacy in domestic law might vitiate a clear international prohibition strikes at the heart of the international law of human rights. It also reveals a cynical unwillingness to apply that law when it matters.

Equally troubling, the Administration's fear of jeopardizing its position in court and opening the door to a flood of refugees led it to stop criticizing ongoing military abuses in Haiti. Once the flow of refugees accelerated, the State Department began a series of tortured efforts to say that human rights conditions in Haiti were not so bad that the refugees could not be returned. Indicative was the State Department's formal opinion, issued on December 13 as soldiers continued to hunt

down Aristide supporters, that "we have no reason to believe that mere identification of an individual as an Aristide supporter puts that individual at particular risk of mistreatment or abuse."

The Bureau of Human Rights and Humanitarian Affairs

The Administration's devaluation of human rights continued to be apparent in its misuse of the Bureau of Human Rights and Humanitarian Affairs. Time and again, when the United States should have outspokenly denounced gross abuses of human rights, it chose instead to dispatch Assistant Secretary of State Richard Schifter, either to defend the abusive government, or to conduct talks with it that turned out to be meaningless because the Administration was unwilling to follow them with either sanctions or public criticism.

- o In China, Schifter took the welcome step in June of submitting a list of prisoners held for peaceful political expression and beliefs. But the Administration then capitulated to Chinese blackmail — the threat of breaking off the nonexistent "dialogue" on human rights — by remaining silent for six months about the meager results of the exercise. Meanwhile, the Administration pressed to continue Most Favored Nation trading status for China unhindered by human rights conditions.
- o Secretary Schifter visited Mexico in January — his first official visit — as pressure grew to consider human rights as part of the North American Free Trade Agreement. However, he pronounced himself "very, very positive" about reforms under way without bothering to check his views with any nongovernmental human rights organization in the country.
- o Secretary Schifter led several delegations to Peru as part of an Administration effort to persuade the U.S. Congress to permit counternarcotics assistance to the highly abusive military. Testifying before Congress in September, he scoffed at a legislative restriction on U.S. aid to abusive militaries as a mere "legalism," dismissed the army's violence as having produced "only a few hundred" political killings, and argued that Peru was deserving of aid because it was not

as bad as Argentina and Chile in the 1970s or El Salvador in the early 1980s.

- o At a time when Indonesian security forces had been responsible for more than a thousand executions and disappearances in Aceh, Secretary Schifter wrote to Congress stating that there was nothing to suggest that human rights violations there were occurring on a "massive" scale.
- o Testifying before Congress about a law in India that suspends constitutional safeguards against arbitrary arrest and torture, Secretary Schifter announced that the Indian government "respects individual rights and is not going to misuse a law deliberately" — despite several thousand detentions under the law following the assassination of former Prime Minister Rajiv Gandhi. When questioned about extrajudicial killings in Punjab, Secretary Schifter said that investigations took place "in private for [the] morale...of the security forces" and that the Administration had been told that those responsible for abuses had been punished. In fact, no police officer or other security personnel had been prosecuted for such killings at the time.
- o Secretary Schifter also lobbied the American Red Cross against adopting a resolution endorsing U.S. ratification of the 1977 Additional Protocols to the 1949 Geneva Conventions. The standards of international customary law that are codified in the First Additional Protocol should have governed U.S. conduct in the Persian Gulf conflict. While U.S. forces generally complied with these standards, they deviated in several important respects. U.S. ratification would be an important statement of willingness to abide by these standards in the future.

We recognize that in assessing the work of the Human Rights Bureau, we generally are not in a position to be aware of its private efforts, particularly within the State Department as an advocate for human rights. To cite two instances that have come to our attention through our contacts with the Bureau, we know that Bureau personnel played a key role in pressing the State Department to address the human rights disaster engulfing Somalia at the end of 1991, and that the Bureau was also highly supportive of efforts to collect documentation of past Iraqi

abuses that became available in northern Iraq.

Praise is also in order for the Bureau's role in supervising and publishing the State Department's *Country Reports on Human Rights Practices*. The volume has continued its trend toward greater accuracy and comprehensiveness, with a diminishing number of political distortions. The mere compilation of the *Country Reports* is an important statement of U.S. concern over human rights, and a major resource on human rights issues.

Unfortunately, the *Country Reports* are also a good indication of the low regard in which the State Department holds the Bureau and the cause of human rights that it represents. With respect to too many countries, the *Country Reports* have become an isolated annual exercise. Few of their findings are ever repeated publicly by a U.S. official, let alone incorporated into U.S. policy.

The International Covenant on Civil and Political Rights

The Bush Administration in the fall of 1991 endorsed ratification of the International Covenant on Civil and Political Rights, which had been signed by the Carter Administration in 1977. Unfortunately, this positive step was marred by the Bush Administration's submission to the Senate of a series of reservations, declarations and understandings designed to dilute the domestic impact of the Covenant. One reservation was aimed, appropriately, at protecting the greater free-expression safeguards offered by the First Amendment to the U.S. Constitution. However, several of the Administration's caveats sought to negate the Covenant's safeguards when they are stronger than those provided by U.S. law. One was in the controversial area of the death penalty, where the United States remains out of step with international trends against capital punishment. Another was an effort to preempt any argument that the federal government should play a more active role than it traditionally has in protecting individual rights from abuse by state governments — a stand with dangerous implications for efforts to enforce human rights in countries around the world with federal systems of government.

This effort to pick and choose among the Covenant's provisions reflects a disappointing distrust of international human rights standards. Efforts to promote compliance with these standards abroad will inevitably be weakened by a refusal to acknowledge their applicability at home.

The Work of Human Rights Watch

This report reviews fifty-seven of the countries in which the five regional divisions of Human Rights Watch were most active in 1991. Each chapter is divided into four parts: a portrayal of human rights conditions in the country in question; a discussion of the degree to which the right to monitor human rights is respected in that country; an analysis of the role played by the United States, and occasionally other governments and international institutions, in promoting human rights in the country; and a description of the steps taken by Human Rights Watch to promote human rights in the country.

The report reflects the year-long research efforts by the Human Rights Watch staff to collect information on human rights conditions. Whenever possible, this research includes periodic visits to the country in question to interview victims and witnesses of abuse as well as to discuss human rights conditions with government officials. In a few cases, we maintain our own staff in countries of concern to gather information day-in, day-out. The report also reflects regular contacts with human rights monitors within the countries in question — that is, groups that have established themselves as human rights organizations as well as lawyers, journalists, relief workers, clergy, scholars, diplomats and others who make a point of collecting pertinent information.

Most of the chapters that appear in this volume are summaries of other reports and newsletters issued during the year. Because this report was prepared in late November and early December 1991, events that occurred in the last weeks of 1991 may not be reflected.

The information that appears in this report also has served as the basis of our advocacy efforts throughout the year. We seek to curb human rights violations in two principal ways. First, we try to stigmatize abusive governments by publicizing their conduct, so governments realize that they will have to call a halt to human rights violations if they wish to regain their international reputation. Second, we seek to encourage third-party governments — particularly the United States but increasingly other governments as well — to end military, economic and diplomatic support for governments that commit gross abuses. Each technique has proved highly effective in pressing governments to be more respectful of human rights.

Although the human rights situation varies greatly from country to country, and the efforts pursued by Human Rights Watch are adapted accordingly, certain aspects of our work have assumed a special

prominence worldwide. The human rights community and others concerned with human rights have come to look to Human Rights Watch to play a leading role in these areas. Among those that again figured prominently in our work in 1991 were the following:

Monitoring Violations of the Laws of War

Over the past decade, Human Rights Watch has increasingly devoted itself to monitoring the conduct of the parties to armed conflicts in an effort to promote compliance with international humanitarian law, or the laws of war. Human Rights Watch's focus on war monitoring derives from its belief that by far the largest number of victims of severe violations of human rights worldwide are the noncombatants who are killed, injured, deprived of food and other necessities, or forced to flee from their homes because of the manner in which opposing forces seek to prevail militarily. In addition, this focus reflects the fact that such war-related abuses of human rights were largely neglected by the worldwide human rights movement before Human Rights Watch determined to assume this role. International humanitarian law was hardly ever mentioned in the reports of human rights organizations until Human Rights Watch began doing so in 1982.¹

In previous years, most of Human Rights Watch's monitoring of armed conflict focused on internal wars. The same was true in 1991 but, in addition, the organization systematically monitored violations of international humanitarian law in the Gulf war and published several reports dealing with human rights abuses related to that war, including a lengthy report on the air war, *Needless Deaths in the Gulf War*. Although that report was highly critical of some aspects of the bombing by the allied forces, it also acknowledged that considerable care was taken by those forces to avoid direct civilian casualties. In a sense, the care that was taken is a tribute to heightened sensitivity to the requirements of international humanitarian law to which Human Rights Watch contributed by the war monitoring in which it engaged in previous years.

¹ The International Committee of the Red Cross, the principal organization that provides humanitarian services to victims of armed conflicts worldwide, does not regard itself as a human rights organization and, for the most part, avoids public denunciations of human rights violations.

The internal wars with which Human Rights Watch was particularly concerned in 1991 included half a dozen wars in Africa (Angola, Ethiopia, Liberia, Mozambique, Somalia and Sudan); two wars in India (Kashmir and Punjab); two in Indonesia (Aceh and East Timor); five in other countries of Asia (Afghanistan, Burma, Cambodia, Philippines and Sri Lanka); the wars against the Kurds and the Shi'as in Iraq; the war in the Kurdish area of Turkey; the war in Yugoslavia; and the wars in three Latin American countries, Colombia, El Salvador and Peru. In addition, Human Rights Watch monitored internal armed strife of varying degrees of intensity in Guatemala, the Israeli-Occupied Territories, Nicaragua, Northern Ireland, Rwanda, South Africa, and in several of the republics of the former Soviet Union, particularly Georgia.

In a few cases, considerable headway was made during 1991 in ending such conflicts. Nevertheless, it seemed important for Human Rights Watch to maintain its monitoring. Two examples are: our publication of *Evil Days — 30 Years of War and Famine in Ethiopia* documenting, among other things, the manner in which the famines that killed hundreds of thousands in Ethiopia were less attributable to natural disasters such as drought than to the direct consequences of human rights abuses related to the counterinsurgency strategy of the regime of President Mengistu Haile Mariam; and *Land Mines in Cambodia*, documenting the placement of land mines by all parties to the conflict, the responsibility of their international patrons, the toll that such mines continue to take on Cambodian civilians and the urgency of undertaking a mine clearance program, especially during a period when refugees are attempting to resettle Cambodia.

Modifying the practices of combatants in war time is a difficult task. Yet it has been the experience of Human Rights Watch that most combatants (with a few notable exceptions, such as the *Sendero Luminoso*, or Shining Path, guerrillas in Peru and the competing factions that were devastating Mogadishu, the capital of Somalia, at the end of 1991) are dependent on international support and sensitive to international public opinion. In many circumstances, the reports of Human Rights Watch have seemed to cause changes in practices that have benefited noncombatants. Also, when peace accords have been negotiated in recent years, detailed agreements to respect human rights, at times with compliance procedures spelled out, have sometimes been incorporated, reflecting the influence of human rights monitoring.

Abuses of Human Rights in Ethnic Strife

In recent years, there has appeared to be a worldwide explosion of ethnic strife, and some of the wars that Human Rights Watch monitors are extreme manifestations of that strife. Human Rights Watch also focuses on such abuses in circumstances short of armed conflict in many countries, whether it involves pogroms against the Gypsy minority in Romania, or systematic discrimination and harassment of the Turkish minority in Greece or the Somali minority in Kenya, or the expulsion of the Palestinians from Kuwait, or Chinese government abuses in Tibet, or restrictions on the right to citizenship for those not of Latvian stock in Latvia.

Unfortunately, it appears that this is an area in which Human Rights Watch will have to concentrate even more in the years ahead. Now that the Cold War is over, the world seems to have entered a period of ethnic-linguistic nationalism as intense as in the period following World War I. Indeed, if anything, the situation seems more dangerous today because, at that time, such nationalism seemed primarily a European phenomenon; today, it appears to affect much of the world. Also, the worldwide proliferation of lethal armaments greatly exacerbates the dangers. Protecting the rights of minorities in such a climate is a formidable task.

Accountability for Past Abuses

In previous years, Human Rights Watch's main focus in this area has been on attempting to see to it that the power that remains in the hands of those who committed gross abuses of human rights in the past does not continue to insulate them from accountability even after successor governments attain office. In several Latin American countries, for example, elected civilian governments have been unwilling to take on the military officials responsible for systematic murder, disappearances and torture for fear that the armed forces would not tolerate even disclosure and acknowledgment of their abuses, much less prosecution and punishment.

In such countries as Argentina, Chile, El Salvador and Guatemala, Human Rights Watch continued to be concerned with those issues in 1991. Elsewhere, however, it was necessary for Human Rights Watch to stress a related concern: that those accused of past abuses must

themselves be accorded fair treatment. Increasingly, the former Communist nations of Eastern Europe are adopting laws that are designed to punish collectively, without due process, those who were associated with the previous governments of their countries. An example is the "lustration" law adopted in Czechoslovakia which bars many Communists and those identified in the files of the secret police as its collaborators from many public and private offices. It seems possible that some of the republics that formerly constituted the Soviet Union will follow a similar path, and that Human Right Watch's concerns with due process as part of its policy on accountability for past abuses will be particularly significant in the period ahead.

Yet another aspect of Human Rights Watch's concern in this area is raised by the case of Iraq. Human Rights Watch is in the process of gathering evidence demonstrating that the abuses by Saddam Hussein's regime against its Kurdish minority in 1987-88 were even greater than had been previously known. Efforts to document the extent of those abuses were being pursued intensively at year's end and, during 1992, Human Rights Watch expects to disclose the results of its research and to seek some means of holding the Iraqi government accountable.

Shaping United States Foreign Policy

From its founding, a principal aim of Human Rights Watch has been to influence United States foreign policy to protect human rights. The concern of Human Rights Watch in this area is two-fold: first, the United States remains the most powerful force in world affairs and it has great power to affect human rights practices in other countries. Second, as a U.S.-based organization, Human Rights Watch considers that it has a responsibility to affect the practices of its own government. Increasingly, it also does the latter by monitoring abuses of human rights within the United States. Yet this is a role that is played by many domestic civil liberties and civil rights groups, whereas no other organization plays a comparable role in attempting to influence U.S. foreign policy on human rights matters.

During most of the 1980s, two regions of the world dominated U.S. foreign policy on human rights: the Soviet bloc and Central America. In both cases, this reflected Cold War concerns. With the end of the Cold War, neither region has such significance in the shaping of the U.S. government's policies on human rights worldwide. Instead, the debate

was most intense during 1991 on China and, secondarily, on human rights in the countries involved in the Gulf war such as Iraq and Kuwait.

As was the case when the focus of debates over U.S. foreign policy was elsewhere, Human Rights Watch played a central role in the shaping of U.S. foreign policy in 1991. Asia Watch was at the forefront of the debate over China, continually bringing to light information that embarrassed the Administration over its failure to take a stronger stand against Chinese abuses. Similarly, Middle East Watch played the leading role in dealing with such questions as Kuwaiti abuses against suspected collaborators with the Iraqis in the period following liberation, and in challenging the Bush Administration's failure to oppose such abuses.

Debating with the Administration over its policy with respect to such countries has also produced indirect benefits for the human rights cause. It puts the spotlight on the abuses that are the subject of the debate, damaging the reputation of the country committing the abuses and, thereby, at times prompting it to try to improve its reputation by reducing abuses. Also, it raises the profile of the human rights issue itself, which sometimes helps to make the Administration pay more attention to human rights in other parts of the world where it may have fewer competing concerns. In the Reagan years, for example, the debate over Central America prompted that Administration to espouse democracy as the solution to violent abuses of human rights. Eventually, that led to U.S. support for the democratic forces in Chile seeking to end the Pinochet dictatorship and to U.S. abandonment of its support for Marcos in the Philippines.

In the case of the Bush Administration, the most discernible benefit of the debates has been the impact on the countries that are in question. China has had to release some prisoners and provide opportunities to travel to some dissenters. Kuwait was required to curb some of the most extreme abuses that followed liberation.

In attempting to shape U.S. foreign policy, Human Rights Watch testified at nineteen congressional hearings during 1991; and maintained regular contact with many members of Congress and their staffs, various offices of the State Department, U.S. embassies in many countries, and occasional contact with several other agencies of government. The majority of the publications issued by Human Rights Watch during the year contained sections assessing U.S. policy toward the country in question.

Protecting Human Rights Monitors

Human Rights Watch considers that one of its principal responsibilities is to support and protect those who monitor and defend human rights in their own countries. Worldwide, the number of persons who devote themselves to monitoring and defending human rights has been growing rapidly. Many who take on this task do so at great risk and, in a distressing number of cases, suffer severe penalties, including death.

Human Rights Watch's efforts include missions and reports that focus on attacks on human rights monitors; continuing work with the group established at the initiative of the Washington office of Human Rights Watch, the Congressional Friends of Human Rights Watch; and assistance in training and fund-raising for groups monitoring human rights in their own countries. To help draw attention to human rights monitors, Human Rights Watch annually brings a group of monitors to the United States in December for a series of events in New York and Washington, including an annual dinner at which they are honored. In 1991, sixteen monitors from fifteen countries were invited to the United States for those events (fourteen came; one was not permitted to travel by her government; the other is a "disappeared" monitor who was "invited" to call attention to the risks of monitoring).

Monitoring Human Rights Abuses That Are Not Politically Motivated

Prior to the establishment of Human Rights Watch, most efforts to protect human rights internationally were exclusively concerned with politically motivated abuses. An exception was the work of Amnesty International on capital punishment which the organization opposes regardless of the identity of the victim.

Although political motivations — broadly defined — are involved in most of the abuses with which Human Rights Watch is concerned, the organization also has attempted to address abuses that derive from other motives. Human Rights Watch's work on ethnic strife could be defined as nonpolitical. Other areas in which Human Rights Watch has been particularly concerned with abuses that are not politically motivated include:

- o **prison conditions:** as described elsewhere in this report, the Prison Project of Human Rights Watch has been engaged for the past few

years in a systematic effort to monitor prison conditions as they affect those charged with common crimes as well as those suspected of politically motivated offenses. Several investigations were conducted and several reports were published on prison conditions in various countries during 1991.

- o **women's rights:** also as described elsewhere, Human Rights Watch established a Women's Rights Project in 1990 which focused particularly during 1991 on violence against women in circumstances in which the state does not offer protection by attempting to prosecute and punish those responsible. One of the aims of the project is to integrate a concern with women's rights into efforts to promote human rights worldwide.
- o **police abuses:** Human Rights Watch has conducted a number of investigations and published a number of reports in previous years focusing on violent police abuses — such as summary executions and torture — against those suspected of common crime. In 1991, Argentina and the United States were the focus of such efforts by Human Rights Watch.
- o **freedom of expression:** Human Rights Watch attempts to protect freedom of expression not only when individuals or groups criticize or challenge their governments or government leaders, but also when the dissemination of information and ideas on any issue is suppressed. Among the issues with which Human Rights Watch has been concerned are the dissemination of information on AIDS, which some governments have limited for fear of the stigma that attaches to the disease; information on damage to the environment; information on corruption; information on the transfer and production of weapons; and academic freedom. Within Human Rights Watch, the Fund for Free Expression spearheads work on these issues.

In many of the countries in which Human Rights Watch worked during 1991, such traditional issues as political imprisonment and torture continued to be the main focus of its work. It is important to note, however, that some governments have become more sophisticated in their abuses. Wary of the international opprobrium that attends the holding of political prisoners, they have shifted toward abuses that are either more violent or more subtle — or sometimes both simultaneously. For example,

except in Cuba, there are hardly any prisoners anywhere in Latin America held for nonviolent political dissent. That hardly suggests, however, that the region has become a human rights paradise. In some countries, abuses involve violent acts that may be difficult to attribute definitively to governments, such as suspicious killings by unidentified persons or disappearances; or methods that are more difficult for purposes of enlisting international protest, such as compromising the independence of the judiciary, threatening lawyers or closing or corrupting the electoral process.

In the experience of Human Rights Watch, effective efforts to protect human rights require flexibility in mounting a response and a willingness to tailor efforts to the circumstances of a country or a region. In the 1980s, Helsinki Watch focused particularly on efforts to protect the emergence of civil society in Eastern Europe. Similarly, in the 1990s, protecting civil society — that is, the independence of lawyers, academics, writers and other professionals — is at the heart of the work of Africa Watch in many countries of the continent where authoritarian states have controlled all the institutions of the society.

As this brief overview suggests, the number of issues with which Human Rights Watch could and should be concerned is nearly endless. The organization's resources are no match for its mission. Yet some significant efforts were undertaken in 1991 and they are discussed briefly at the conclusion of each of the country reports in the pages that follow.

Human Rights Monitors Killed During 1991

As noted, each of the following chapters contains a discussion of the extent to which the government in question respects the right to monitor its human rights practices. In many nations, human rights monitors pursue their work at tremendous risk to their lives. The following monitors were killed in the course of 1991.

COLOMBIA

Alicides Castrillon, a member of the National Coordinator of Human Rights, Displaced and Refugees of the Dirty War, was murdered on February 25 in Bogota. He was approached by armed men who followed him to his home where they shot and killed him. Originally from Meta, Castrillon moved with his family to Bogota following telephone death

threats. In early February, he participated in a meeting with the attorney general, where he denounced human rights abuses committed by the military against civilians in its war against insurgents in the department of Meta.

José Humberto Hernandez Gabanzo, a member of the Regional Committee for the Defense of Human Rights in Barrancabermeja, Santander, was murdered by unknown assailants in the streets of that city on March 19. Hernandez, 56, was active in the trade-union and peasant movements. Most recently, he had been a full-time volunteer in the Regional Committee for the Defense of Human Rights, working closely with its president, attorney Jorge Gomez Lizarazo. Members of that organization have been repeatedly threatened because of their work documenting abuses by the army, police and paramilitary organizations in the Middle Magdalena area.

CUBA²

Angel Galvan Vanegas, was shot and killed by a Cuban policeman on September 28, 1990. Several police, acting on orders to "clean up the neighborhood," attempted to arrest four young men, one of whom was Galvan's son. When Galvan tried to find out why his son was being arrested, he became involved in a shoving match with the officer, who took out his gun and shot Galvan in the chest. Galvan had been involved with two independent groups, the Cuban Human Rights Party and the *Lancheros* Council, an independent group that campaigns on behalf of those who are imprisoned for attempting to leave the country without permission. Galvan's killing coincided with Fidel Castro's denunciation of human rights activists as "worms" who should be fought, and with the anniversary of the thirtieth anniversary of the founding of the Committees for the Defense of the Revolution, Cuba's grassroots surveillance network.

GUATEMALA

Juan Perebal Xirúm, a member of the Council of Ethnic Communities "We Are All Equal" (CERJ) from Chunima, was shot dead by six gunmen

² This killing from 1990 is recorded here because it was not included in our report of last year.

as he walked with two sons toward Chupol on February 17. One of his sons also died in the attack; the other was left paralyzed. Members of his family had been threatened repeatedly by the local civil patrol chiefs. Diego Perebal León, the son who survived, identified two of the gunmen as the local civil patrol chiefs.

Manuel Perebal Morales, a CERJ member from Chunima, was shot dead in the same incident described above.

Camilo Ajquí Jiménez, a CERJ member from Potrero Viejo, in the municipality of Zacualpa, El Quiché, was stabbed to death by three unidentified men who dragged him from his house on April 14. Civil patrol chiefs and military commissioners in Potrero Viejo have repeatedly threatened to kill CERJ members in the community.

Celestino Julaj Vicente, a twenty-nine-year-old CERJ delegate from Chuitzalic, in the municipality of San Pedro Jocopilas, El Quiché, was shot dead by a gunman dressed in olive green as he walked home from a festival in San Pedro Jocopilas on June 28. About six weeks before the murder, the civil patrol chiefs of San Pedro Jocopilas had reportedly vowed in a meeting to kill any CERJ members who attended the June 28 festival.

INDIA

Shankar Guha-Niyogi, 48, was murdered on September 28 when two men broke into his house in the early morning hours and shot him six times while he was sleeping. Guha-Niyogi was a long-time member of the National Council of the Peoples Union for Civil Liberties, one of India's foremost human rights organizations. At the time of his death, he was involved in organizing efforts at three industrial plants. It is suspected that the killers were hit men hired by industrialists in an effort to stop those activities.

Narra Prabmakara Reddy, 35, was shot to death by unidentified men who entered his home in the early morning hours on December 7. Prabmakara Reddy was a member of the Andhra Pradesh Civil Liberties Committee (APCLC) and the secretary of the District Bar Association. He was the third member of APCLC to have been assassinated since September 1985.

PERU

Porfirio Suni Quispe, a prominent leader of the Departmental Federation of Campesinos of Puno, as well as regional parliamentarian and president of the regional congress's human rights commission, was dragged from his home on May 13 in the early morning by two men in civilian clothes. His attackers, members of the insurgent group *Sendero Luminoso*, shot Suni three times, then once more as a *coup de grace*.

TURKEY

Vedat Aydın, 39, a founding member of the Diyarbakir branch of the Turkish Human Rights Association, was taken from his home on July 5 by several armed men who identified themselves as police officers. The authorities later denied that he was in custody. His body was found on July 8, about sixty kilometers from Diyarbakir; his skull was fractured, both legs were broken, and there were fifteen or sixteen bullet wounds to his body.

AFRICA WATCH OVERVIEW

Human Rights Developments

In Africa, the year 1991 proved momentous. Several despotic governments lost power, others were belatedly forced to concede the principle of democratic accountability, and two major long-running civil wars came to an end. The "winds of change" that had become noticeable in 1990 were blowing more strongly still. However, human rights violations continued in all parts of the continent, in some places reaching unprecedented levels. Africa Watch faced increased demands for its work, and was continually faced with new challenges.

Without doubt, the most important and hopeful development in 1991 was the rapid spread of demands for democratization. Following the end of the Cold War, dictators who had previously relied on the unquestioning support of the United States, the Soviet Union or France suddenly found themselves as clients in search of a patron. As the value of these dictators as pawns in a global chess game diminished, the former patrons were unwilling to continue underwriting authoritarian, warlike and abusive governments. The withdrawal of international support forced these dictators to confront internal pressures for change. Many Africans who had courageously struggled for years to secure human rights and civil liberties began to see the prospect of success. Movements for multiparty democracy, civil liberties and human rights blossomed and gained confidence throughout the year.

The most auspicious change in 1991 was the election in Zambia, in which President Kenneth Kaunda, who had ruled the country since independence, was defeated in a fair multiparty election. Kaunda gave his successor a tour of the State House, handed over the keys and left peacefully for his farm, setting an important precedent for the peaceful transfer of power in Africa. The resounding vote served a warning to other authoritarian leaders who were desperately trying to stem the democratic tide.

However, few rulers yielded to the pressure for change with the grace of Kaunda. Some, such as President Kamuzu Banda of Malawi, continue to resist any significant liberalization. In Sudan, the Islamic fundamentalist military government consolidated its power, further undermining the institutions of civil society and strengthening its

structures of control. In Togo, the military repeatedly tried to reverse the democratic gains of 1990 and 1991, and in December 1991 stripped the prime minister of his power; to avoid further bloodshed, he was forced to accept an agreement under which he would exercise power jointly with Gnassingbe Eyadema, Togo's former despot. Governments in Cameroon, Kenya and Mauritania yielded only belatedly and grudgingly to the inevitability of democratic accountability. Snap elections have been called to deny the opposition time to organize. In Burkina Faso, the sole candidate in the November presidential election remained the incumbent, Blaise Compaore; on December 10, an opposition leader was killed and another critically injured after having led a campaign to boycott the election.

Many governments tried to manipulate the democratization process to ensure their continuation in power under a democratic veneer. In Nigeria, the military government has promised a transition to civilian rule, but is tightly controlling the process, establishing the only two authorized political parties, repeatedly interfering in the electoral process, and greatly restricting freedom of association. The very institutions of civil society that ought to be organizing themselves to form the foundations of a democracy are thus being undermined. Similar processes are at work in Ghana, where the government of Flight Lieutenant Jerry Rawlings has promised multiparty elections but has continued to maintain control over all aspects of political life as a new constitution is drafted. The political parties that are to contest the election remain banned, while campaigning on behalf of the future government-sponsored party has, in effect, already begun.

The transition in South Africa is one of the most important, and has also been marred by numerous government-sanctioned abuses. The security forces have been instrumental in orchestrating interethnic violence in an effort to undermine the credibility of the African National Congress.

Rebel movements were not immune from the pressure for change. In August, senior commanders of the Sudan People's Liberation Army staged an attempted coup against the movement's authoritarian leader, Colonel John Garang, accusing him of widespread human rights abuses that have been substantiated by independent sources.

Nineteen ninety-one saw the end of two of the continent's longest and bloodiest wars. In May, President Mengistu Haile Mariam of Ethiopia fled abroad after the resounding defeat of his army by the combined forces of the Ethiopian People's Revolutionary Democratic Front and the

Eritrean People's Liberation Front, which assumed control of the government a week later. In the case of the Eritreans, a thirty-year war for independence was finally concluded by military victory. In Angola, a sixteen-year civil war was concluded in June with a peace agreement between the formerly Marxist and Soviet-backed government and the U.S.- and South African-backed rebel forces of Jonas Savimbi's National Union for the Total Independence of Angola (UNITA). By the end of the year, the process of maintaining the peace and forging a transition to democracy was still on course.

Other wars proved more intractable. In Mozambique, despite the government's rapid moves toward political liberalization, peace remained elusive, with the rebels of the Mozambican National Resistance (RENAMO) showing great reluctance to pursue civilian politics in the place of their military struggle.

Undoubtedly the worst case of human rights abuse following the overthrow of a dictatorship has been Somalia, where it has proved impossible to establish a stable government. In mid-November, a conflict between two factions of the United Somali Congress degenerated into all-out war on the streets of Mogadishu, causing unprecedented scenes of carnage and loss of civilian life. The north unilaterally seceded to become the nation of Somaliland.

As elsewhere in the world, the demise of one-party or military governments has witnessed an upsurge in interethnic violence. In Mali, the insurrection among the ethnic Tuareg in the north intensified following the March overthrow of the military regime of Moussa Traore. The civil war that broke out in Djibouti in October was directly linked to competition for power between the ethnic Afar and Issa. There have been many incidents of interethnic conflict in Ethiopia under the transitional government. Throughout the continent, authoritarian rulers continued to raise the specter of "tribalism" to justify their hold on power.

The Right to Monitor

In 1991, the increased demands for democratization in Africa saw the establishment of new human rights groups in many countries. In others, several new organizations describing themselves as human rights organizations were created, although it was evident that these groups also had their own political agendas.

More important than the creation of formal groups was the growing

number of Africans — ordinary citizens, clergy, journalists, lawyers and professionals — who took the initiative to document and publicize abuses. In several countries, human rights activists, particularly outspoken lawyers and journalists, played a key role in the movements struggling to ensure a transition away from authoritarian regimes. For example, in Togo, human rights lawyers were prominent in the national conference that stripped the former despot, Gnassingbe Eyadema, of his power. The conference appointed a human rights lawyer as the interim prime minister. In Kenya, Rwanda and Cameroon, a number of journalists and editors were arrested and detained, their papers banned, their homes and offices searched, their passports confiscated, and their right to travel abroad barred.

Following the overthrow of abusive regimes or the announcement of moves toward a more democratic system, new groups were established in, among other countries, Rwanda, Cameroon and Ethiopia. While some of the new groups have been able to criticize the government without suffering reprisals, three human rights groups in Cameroon reportedly were dissolved by the government. In Rwanda, where five new human rights organizations were created in 1991, three activists were recently involved in suspicious automobile "accidents." In addition, the president of the Rwandan Association for the Defense of Human Rights, a prosecutor, was demoted and transferred to a remote spot.

Established human rights monitors in a number of countries were subjected to intimidation. In Nigeria, the Civil Liberties Organization, the Committee for the Defense of Human Rights, and the Constitutional Rights Project faced new threats from the government. In Sudan, the government embarked on a policy of creating "new" pro-government groups to replace the dissolved Sudanese Human Rights Organization and the Sudan Bar Association. In South Africa, despite the lifting in June 1990 of the nationwide state of emergency which had made it impossible to monitor abuses, the Internal Security Act still provides for the banning of organizations. In the homeland of Bophuthatswana, Black Sash, the Transvaal Rural Action, and the Bafokeng Women's League continued to be banned. Since October 17, the Mafikeng Anti Repression Forum has been banned from visiting prisons and hospitals in Bophuthatswana.

It remained impossible to establish effective groups in most of the countries that are still in the midst of internal conflict, such as Angola, Mozambique, Liberia and Somalia.

While the growing confidence of activists is one of the most encouraging signs in Africa, the new groups with rare exceptions remain

fragile. Most cannot afford full-time staff, lack material support and, since they are new, do not have the international profile that can protect their members or the institution itself from official attack.

U.S. Policy

The end of the Cold War, which made many African despots, including Mobutu Sese Seko of Zaire and Mohamed Siad Barre of Somalia, important strategic allies for the United States should have made it possible for Washington to shed its former unsavory alliances and support the democracy movements sweeping the continent. In some important cases, such as Kenya, the Bush Administration adopted a strong human rights policy and pursued it vigorously. Unfortunately, in other important cases, the United States failed to champion human rights and democracy in Africa and continued support for regimes with poor human records. Observers in Congress frequently assign the blame for a less-than-vigorous human rights posture to the National Security Council, as opposed to the State Department's Africa Bureau.

Assistant Secretary of State for African Affairs Herman Cohen has departed from the short-sighted and disastrous policies of the Reagan Administration, and made important strides in supporting human rights in many African countries. Secretary Cohen has recruited foreign service officers for his bureau who are interested and involved in human rights and has helped to arrange a number of positive appointments of U.S. ambassadors to African countries. The secretary himself welcomes the input of human rights organizations. Nonetheless, the Bush Administration's human rights policy in Africa has been flawed by an inability to shake off certain Cold War commitments and a distressing inertia in the face of massive human rights problems that have swept countries formerly allied with the United States.

Some of the worst human rights disasters on the continent were the legacy of past U.S. policies that were largely inherited by the Bush Administration. Unfortunately, the United States failed to act when its former allies were swept from power and several countries on the continent disintegrated into chaos and massive abuses. In the case of Zaire, for example, the Administration continued to see a role for the widely discredited and wholly corrupt Mobutu government in a hoped-for "transition to democracy," notwithstanding abundant evidence that Mobutu is the chief obstacle to such a transition. When the United

States's favorite West African leader, Liberia's Samuel Doe, was assassinated in September 1990 and the country deteriorated into a bloody civil war with several thousand civilian casualties, the United States stayed on the sidelines, leaving West African governments of the Economic Community of West African States to occupy the country and restore order. Similarly, when long-time U.S. ally Siad Barre was ousted from Somalia in January 1991, the country was plunged into a series of bloody civil wars. The fighting in the capital Mogadishu in November and December was so fierce that international humanitarian agencies warned of an unprecedented human disaster. Washington provided generous humanitarian aid but, at the time of this writing, appeared to be waiting for other governments to call publicly for a concerted international response that might rescue the country's suffering civilian population. The Office of Disaster Relief Assistance has taken the lead in pushing the Administration to adopt a more vigorous response to the disaster there.

Elsewhere on the continent, Secretary Cohen played a critical role in helping to assist Ethiopia in a transition from Mengistu's sixteen-year rule when he was ousted after a decades-long civil war by the forces of the Ethiopian People's Revolutionary Democratic Front. Ambassador Cohen's engagement in discussions at the war's end helped to persuade Mengistu to leave Addis Ababa and played a role in preventing the massive bloodshed that would have ensued in a battle for the city. The Africa Bureau's activism in the case of Ethiopia is a good model for what is needed in the crisis in Somalia — a crisis which the United States has much responsibility for creating, given its long-time support for the Siad Barre regime.

As demands for democratization intensified throughout Africa and many regimes were forced to make concessions, the United States all too often trumpeted the desperate, incremental moves of various authoritarian regimes as profound and dramatic change. Many governments passed laws facilitating the establishment of opposition parties and redrafted constitutions, while at the same time cracking down on individual activists and their institutions. Some governments, in Nigeria and Ghana for example, announced a transition to civilian rule, while simultaneously destroying the civic institutions that are the basis of any eventual democracy. The Administration's public statements and its aid policies in such cases should be more closely tailored to reality than to hoped-for improvements.

In South Africa, which has always received more attention than any other country in Africa, the Administration continued to encourage

President F.W. de Klerk's efforts to abolish apartheid legislation. However, in its eagerness to reward de Klerk for his important moves, including by lifting sanctions, the Administration has overlooked a number of important issues that should have influenced its assessment of government policy. First, it failed to investigate the consistent reports from credible organizations linking the security forces to the continuing violence among supporters of the African National Congress and Inkatha. Second, it continued to ignore the dismal human rights situation in the homelands and made no effort to make improvements there an integral issue in the talks toward a democratic South Africa.

To its credit, the United States played a highly positive role in a number of countries. In Mauritania, where the Moor-dominated government continued to abuse the rights of its black citizens, the Administration criticized discriminatory practices against black Mauritians. In Kenya, an activist ambassador, backed by the State Department, was consistently supportive of Kenyans fighting for an end to one-party rule. He frequently expressed publicly his concern about arbitrary government actions, and maintained warm relations with the Kenyan human rights community. In an important move at year's end, the United States took the lead in persuading Kenya's other international donors to make progress in democratization and human rights a precondition for foreign aid.

The Work of Africa Watch

Africa Watch continued to concentrate on a wide spectrum of issues. As well as continuing our established work on the Horn of Africa and southern Africa, we have begun more extensive work on western Africa. An important element has been working with local human rights groups; in April, we published an edited version of the Nigerian Civil Liberties Organization's report on prison conditions in that country to ensure wider dissemination.

The protection of civil society — central to the success or failure of transitions to democracy — has been a major emphasis. A thematic report, *Academic Freedom and Human Rights Abuse*, was published in April, and attacks on civil society were the main element in a report on the transition to civilian rule in Nigeria. Similar work has been done on Cameroon, Ghana, Kenya and Mozambique. A more substantial thematic report on human rights and transitions to democracy is planned for 1992.

We have also begun work on a detailed report that will examine the obstacles to a fair system of justice in at least sixteen African countries. The report on academic freedom will be updated and expanded on an annual basis; its success was an important lesson on the need to undertake work that would draw new constituencies into the field of human rights. As a result, a report is currently underway on writers and human rights abuses in Africa, to be published in 1992.

As in the past, monitoring abuses in the course of war has been a central theme of Africa Watch's work. In September, we published a report, *Evil Days: Thirty Years of War and Famine in Ethiopia*, the first extensive documentation of the gross abuses committed by successive Ethiopian governments. Publication of the report was followed with a visit to Addis Ababa to meet the new government and discuss how those responsible for gross abuses should be brought to trial. Abuses committed during war have been documented in newsletters on Angola, Liberia and the Nuba Mountains area of Sudan, and a forthcoming report on Mozambique. A study of land mines in northern Somalia has also been undertaken for publication in 1992, as well as a report on abuses by both sides to the conflict in Rwanda, where a war broke out in October 1990.

Africa Watch's most ambitious report on a single country was *Kenya: Taking Liberties*, which documented a wide range of human rights concerns in that country, including interference in the judiciary, arbitrary detention and torture, discrimination against ethnic Somalis, and government-sponsored violence in rural areas.

Africa Watch's work was in increasing demand on the continent itself, though many governments remained reserved or hostile. Although Mauritania broke its long-standing refusal to meet Africa Watch and has invited a mission for January 1992, Cameroon has not responded to requests by Africa Watch representatives to conduct formal missions and Kenya continued to deny a visa to the executive director of Africa Watch.

CAMEROON

Human Rights Developments

Human rights violations in Cameroon in 1991 were closely linked to rising calls for democratization. Tensions between the government and the political opposition worsened in the second half of the year, reaching new heights of violence and bloodshed as the government killed dozens of opposition demonstrators and beat many others. Some demonstrators were responsible for beatings of police and other civilians and for acts of vandalism. The government also continued to arrest opposition activists and refuse the opposition's demand for a national conference.

To its credit, the government declared an amnesty for political prisoners in late March, releasing about one hundred who had been held in administrative detention without charge or trial since the abortive coup of 1984. But the government's often brutal response to the wave of demonstrations and strikes during 1991 raised serious doubts about its stated commitment to democratization.

On December 19, 1990, new legislation was enacted regarding the state of emergency, the press, associations and political parties, among other matters. Although the government claimed to be liberalizing the laws in these areas, the revised laws in fact retained much of their repressive nature. The press law, for example, continues the practice of prior censorship — that is, all publications must be submitted to the censor before publication. Although prior censorship has existed in Cameroon since independence, the new press law codifies the practice for the first time.

The new law on associations permits the government to ban any organization which it deems to have deviated from its objectives and or to threaten public order or state security. The law relating to the state of emergency repealed legislation dating from 1962 but permitted the declaration of states of emergency by presidential decree for up to six months; extensions are permitted after "consultation" with the National Assembly. During a state of emergency, the authorities are given broad powers of administrative detention. Although opponents no longer face the prospect of criminal trials for "subversion" before military tribunals, a new law permits political trials to be held before the recently created State Security Court, from which there is no appeal.

The government's attitude toward dissent was demonstrated early in 1991. Célestin Monga, an economist who writes for the independent newspaper *Le Messenger*¹ as well as the Paris-based *Jeune Afrique Economie*, and Pius Njawé, the editor of *Le Messenger*, came under investigation in late December 1990 for an open letter to President Paul Biya that had been published in *Le Messenger*. The letter, written by Monga, criticized President Biya's December 3, 1990 address in which he had stated, "I have brought you democracy and liberty."² On January 18, the two journalists were each given six-month suspended sentences and a fine of 300,000 CFA (approximately \$1,100) on charges of insulting the courts and the members of the National Assembly. The trial sparked large demonstrations in support of the defendants, and three demonstrators were killed in the northern city of Garoua.

Pro-democracy demonstrations were broken up, often violently, in various parts of the country in early 1991, and the violence escalated in April. Between April 10 and 15, at least eight demonstrators were killed and several others wounded in the north and southwest of the country, as well as in the major cities of Yaoundé and Douala. In addition, several hundred people were detained in Yaoundé, including some three hundred students after security forces attacked the university.

Tensions, and the death toll, continued to rise in May, June and July, after clashes between police and demonstrators. On June 25, the opposition announced "Operation Ghost Town" in an attempt to force the government to accede to their demands for a national conference. The "Ghost Towns" campaign, which was continuing in many parts of the country through December, involves the voluntary closing of businesses, shops and taxi services, and the refusal to pay government taxes.

¹ *Le Messenger* was created in 1979 as a weekly journal of information, debate and political commentary. It had a circulation in Cameroon of fifty to sixty thousand, as well as subscribers in other parts of Africa, Europe and North America.

² Monga wrote: "Like many other Cameroonians, I was shocked by the outrageously condescending, paternalistic and pretentious tone that you used at the National Assembly.... This is a country where every day the most fundamental human rights are ridiculed and where the majority of the people do not have enough to live on, while a small handful of opportunists share the riches of the country with impunity."

Meanwhile, the government formed the Operations Commanders, charged with re-establishing public order in areas where demonstrations and unrest have occurred in seven of Cameroon's ten provinces. These commanders, who are superior to the local military structure, are widely believed responsible for the continued use of excessive force against demonstrators.

In July, six independent organizations were banned — Cap Liberté, the Cameroon Organization for Human Rights, the Collective of Women for the New Deal, Human Rights Watch,³ the Association of Professional Drivers, and the National Association of Cameroonian Athletes. The groups were dissolved by order of the Minister of Territorial Administration on the grounds that their activities were incompatible with their legal status, i.e., they were engaging in political activity. All six groups were part of the Opposition Coordinating Group, and their banning was clearly meant to dampen the political opposition in Cameroon.

Over the summer, the government began a new crackdown on the independent press. Independent newspapers, notably *Le Messenger*, were frequently confiscated. In July, a new censorship authority was created within the government-run printing house (where most newspapers are printed), which reinforced government censorship of independent newspapers. In August, without explanation, the government banned five of the leading independent newspapers: *Le Messenger*, *La Vision*, *Galaxie*, *La Nouvelle Expression* and *Challenge Hebdo*. Two other newspapers were later suspended. The banning order against *Challenge Hebdo* and *Galaxie* was lifted in late September or early October, and the remaining banning orders were lifted late in the year.

On September 4, when dozens of independent journalists staged a peaceful march to protest the banning of the newspapers, they were attacked by security forces. Several of the demonstrators were injured, and approximately forty were detained.

In late September, at least thirty and possibly as many as sixty opposition activists were arrested in Douala after publicly protesting the arrest of a leading activist, Jean-Jacques Ekindi, founder of the Progressive Movement. Despite the protesters' lack of resistance, the police severely beat those arrested, stripped them, and put them in a

³ The Cameroonian Human Rights Watch is not affiliated in any way with the New York-based organization responsible for this report.

filthy cell. Charles Tchoungang, a lawyer and president of the banned Cameroon Organization for Human Rights, was among those seriously mistreated. Others arrested were Samuel Eboua of the National Union for Democracy and Progress; and Anicet Ekané and Henriette Ekwé, former political prisoners.

In October, President Biya announced that legislative elections would be held in February 1992, and invited representatives of the opposition parties to meet with the prime minister in early November to discuss a revision of the electoral code and access by the opposition to the media. In late November, the opposition split, with forty-one parties signing an agreement with the government while other parties and individuals maintained their opposition. However, many Cameroonians remain skeptical about the government's intentions, given its refusal to convene a national conference, lift the ban on independent associations, and disband the Operations Commanders. In addition, during the night of November 17-18, Benjamin Senfo Tonkam, the leader of the independent student movement, was arrested in Douala, and continues to be held without charge or access to lawyers and family. There are serious concerns about his treatment in detention.

The Right to Monitor

Since the banning in July of the six independent organizations, three of which were reportedly human rights organizations, there have been no independent human rights monitoring groups in Cameroon. The three banned monitoring organizations — Cap Liberté, the Cameroon Organization for Human Rights and Human Rights Watch — were formed in 1991. Some of them are reportedly attempting to continue their work despite the ban. There is also a governmental human rights organization — the National Committee of Human Rights and Liberties — which has not criticized the government.

Most reporting on human rights in Cameroon is done by the independent press. *Le Messenger*, in particular, often reports on human rights violations around the country and criticizes the government for these abuses. However, when *Le Messenger* published a list of the political prisoners who had been held since the 1984 coup attempt and were released in the government amnesty, the authorities confiscated the issue. Such reporting was one of the factors that led to the August banning of the leading independent newspapers. Throughout 1991, editors such as

Pius Njawe were arrested, threatened, prevented from traveling abroad and kept under strict surveillance. In September, during a peaceful march for press freedom, Njawe was threatened at gunpoint by police in Douala, and several other protesters were injured.

The Cameroonian authorities have never responded to Africa Watch's repeated requests to send a fact-finding mission to Cameroon.

U.S. Policy

During 1991, the U.S. government made no public statements about human rights in Cameroon. State Department sources told Africa Watch that this silence was due in part to the encouraging trend in human rights during most of the year. They cite the legalizing of opposition political parties, the lifting of many restrictions on the press and the freeing of political prisoners. However, given the increasingly disturbing pattern of human rights abuses in the second half of the year, this lack of public protest was unfortunate.

U.S. Embassy representatives, including Ambassador Frances Cook, reportedly raised human rights concerns privately in their dealings with Cameroonian authorities. According to the State Department, the Embassy made a number of demarches to the Cameroonian authorities about human rights abuses, including expressions of concern about excessive force used by the police and army against civilians, arbitrary arrest and detention of opposition activists, harassment of journalists and suspension of independent newspapers.

The Embassy also deserves credit for maintaining contact with opposition activists, journalists and other victims of human rights abuse. Because of these contacts, the Embassy is often informed quickly about the arrest or mistreatment of opposition activists. In January, the U.S. consul in Douala attended the trial of Celestin Monga and Pius Njawe, who were accused of slandering President Biya. On three occasions, according to the State Department, the United States protested abuses privately in both Yaoundé and Washington: on June 21, when a number of opposition activists were arrested in front of the U.S. Embassy after meeting with Embassy representatives to present a letter calling on the U.S. government to distance itself from President Biya; in early July, when a number of activists representing the Opposition Coordinating Group were arrested for holding a meeting after the Embassy's annual

July 4th party;⁴ and in September, when some thirty journalists demonstrating for press freedom were beaten in Douala. According to the Embassy, their officials attempted on several occasions to visit people imprisoned on political grounds, but their request for access was not always granted.

In early May, President Biya traveled to the United States on a private visit to receive an honorary degree from the University of Maryland. Biya met briefly with President Bush and Herman Cohen, assistant secretary of state for African affairs, but no public statements were issued. However, State Department sources indicate that U.S. officials told Biya privately that he should do more to accommodate the opposition, including meeting with opposition representatives, and that the U.S. government was concerned about the use of excessive force and continued censorship. However, by not making any public comment, the Bush Administration missed an important opportunity to demonstrate U.S. concern for mounting human rights abuses in Cameroon.

As in the past, the State Department's *Country Reports on Human Rights Practices for 1990* provided an accurate description of human rights abuses in Cameroon, including cases of extrajudicial killing, beating and torture of detainees, harsh prison conditions, arbitrary arrest and detention, and restrictions on freedom of the press.

The Work of Africa Watch

In February, Africa Watch published a newsletter describing attacks on the independent press in Cameroon. The newsletter focused on the January trial of Monga and Njawa as well as the publication of the new press law codifying censorship. The newsletter was translated into French in the spring.

In April, Africa Watch published *Academic Freedom and Human Rights in Africa*, which discussed human rights violations against the academic community in fourteen countries. The chapter on Cameroon described the problem of self-censorship in the university, reinforced by the pervasive presence of security agents and occasional acts of violence by the authorities.

⁴ The U.S. Embassy invited a cross-section of Cameroonians to their Fourth of July party – opposition activists as well as government officials.

Africa Watch also published articles on human rights in Cameroon. In February, an Africa Watch article discussing attacks on the independent press in Cameroon and Togo appeared in *The Nairobi Law Monthly*. In early May, just before Cameroon's President Biya was to receive an honorary degree from the University of Maryland, Africa Watch published an article in *The Baltimore Sun* describing the attacks underway against students in Cameroon and the severe restrictions on academic freedom. The article was translated and reprinted in Cameroon in the May 8 issue of *Le Messager*.

ETHIOPIA

Human Rights Developments

The story of human rights in Ethiopia during 1991 falls into two distinct phases: before May 28, the day on which the government of former President Mengistu Haile Mariam surrendered, and after May 29, when the Eritrean People's Liberation Front (EPLF) took control of Eritrea and a government headed by the Ethiopian People's Revolutionary Democratic Front (EPRDF) seized power in the remainder of the country. While human rights abuses occurred on both sides of the dividing day, they were very different in nature. Overall, the human rights situation in Ethiopia is now enormously improved.

The year opened with the end of a prolonged lull in the civil war, in which neither side had made much progress for about ten months. Still, abuses had continued, notably the bombing of civilian targets by the Ethiopian air force and violations associated with forcible conscription into the Ethiopian armed forces. Violations associated with forced conscription included the use of press gangs and other arbitrary and violent means of recruitment without due process or an opportunity for conscripts to communicate with their families; the maltreatment of conscripts and summary execution of those attempting to escape; and the conscription of children under age fifteen.

Famine conditions persisted in several parts of the country. The Joint Relief Partnership of the Ethiopian churches was successfully transporting

food across the battle lines into EPRDF-held Tigray, but the government continued to bomb relief convoys moving across the border from Sudan. In January, the EPLF, the government and the United Nations belatedly agreed on a procedure for transporting food from the EPLF-held port of Massawa to the government-held city of Asmara.

A particularly egregious abuse by the air force occurred on May 8, when fighter-bombers attacked the small Tigrayan market town of Sheraro, killing fifteen and wounding ninety civilians. Sheraro lay several hundred miles behind the front line and thus had no military significance; it did, however, have symbolic significance as the first town occupied by the Tigrayan rebels in the 1970s.

In late February, the war suddenly escalated when the EPRDF launched a major military assault on government positions in the northwest. The attack was stunningly successful and set in motion a relentless advance on Addis Ababa, which culminated in the flight of President Mengistu on May 21 and the capture of the city a week later. The advance saw abuses, principally by the government. These included the summary execution of over 120 prisoners in Gonder prison, the bombing of civilian targets and the burning of villages. On the rebel side, there were reports of detentions of suspected political opponents and the forcible dispersal of hostile demonstrations. The advance also brought the EPRDF into conflict with the guerrilla forces of the Ethiopian People's Revolutionary Party (EPRP), a conflict which continued until the end of the year.

A joint EPRDF-Oromo Liberation Front (OLF) force also approached the camps, where about 270,000 southern Sudanese refugees were seeking shelter from the war in Sudan. As the fighting approached, the refugees fled back into Sudan, creating a humanitarian emergency. While the camps were never actually attacked by the EPRDF or the OLF, a general breakdown in law and order in the border area led to killings by local militias. The refugees were also subject to abuses by the Sudanese government, notably aerial attacks (see chapter below on Sudan).

In Eritrea, the EPLF advanced simultaneously on the port of Assab and the city of Asmara. EPLF shelling of Asmara hit a relief airplane and forced the premature ending of a U.N. relief airlift. Meanwhile, the Ethiopian army in Asmara refused to distribute the international relief brought to the city from Massawa, evidently holding it as a reserve for its troops. Government soldiers launched deliberate reprisals against civilians, such as the execution of prisoners in response to successful EPLF operations. There were also numerous instances of soldiers killing

local residents and looting their homes. The EPLF intensified its campaign of assassinating alleged security-force collaborators, claiming that the people killed had been previously tried in absentia and warned to cease their criminal activities.

The escalation of the war saw a further crackdown on civil and political rights in government-controlled areas. A notable abuse was the forcible conscription of school and university students to the armed forces. Students were simply rounded up and bused off.

The EPRDF occupied Addis Ababa on May 28. About seven to eight hundred civilians were killed in the occupation, mostly because of explosions at ammunition dumps. During the occupation of Addis Ababa, about four to five hundred civilians were killed when an ammunition dump exploded on the western periphery of the city. The civilians were apparently engaged in looting the arms depot when a member of the EPRDF fired in their direction, apparently to deter them, and set off the explosion. About two hundred people, combatants and civilians, were killed in the last battles in the city as Mengistu's final loyal forces fought to the last. On June 4, in an act of sabotage, another ammunition dump was exploded, almost certainly by supporters of the former regime, and one hundred were killed and 130 wounded.

While occupying the city, the EPRDF was confronted with several demonstrations. Many of the demonstrators were armed with stones, and a few with firearms. The EPRDF combatants had neither training in riot control nor appropriate equipment, and used their firearms on several occasions. In a series of incidents, at least two EPRDF members and ten demonstrators were killed.

Although large-scale war has now ceased, there have been continuing disturbances in several parts of the country, notably the Afar lowlands and the Oromo and Issa areas of the southeast. Some of these have involved significant loss of civilian life. The underlying reason for the continuing violence has been the century-old legacy of bitterness felt by marginalized people toward their Amhara rulers. The immediate spark has been disagreements over whether EPRDF or local forces should police certain areas. A major dispute in Dire Dawa, in eastern Ethiopia, was between the Oromo and Issa communities over land rights, which led to several dozen deaths. These disputes have led to friction between the EPRDF and the OLF, Issa and Afar organizations.

Upon seizing power, the EPRDF immediately instituted a number of welcome measures, such as releasing all political detainees, dissolving the security organizations of the previous regime, and promising that those

primarily responsible for gross abuses of human rights under that regime would be brought to justice, with due process and in the presence of international observers. In July, a national conference was held with most groups represented, with the notable exception of the EPRP. A Council of Representatives was convened and a Transitional Charter was adopted. Democratic elections were promised within two years. These steps signified the most serious attempt in fifteen years to start a peaceful political process that could bring together the disparate groups of Ethiopia. Progress has been hampered by the lack of a democratic tradition, considerable distrust among groups, and the EPRDF's status as the only group with a sufficiently clear and comprehensive command structure to operate as a functioning political party. Partly because of this organizational disparity, and partly because of its Marxist-Leninist background, the EPRDF has to a large extent monopolized government operations, with other organizations assuming a more token role. The adoption of a regional administrative structure at the end of the year, probably a forerunner to a federal constitution, is likely to go some way toward distributing power more equitably.

The Transitional Charter allows for the formation of political parties, freedom of assembly, and a free press. Numerous political parties, most of them ethnically based, sprang up. However, the EPRP and parties believed to be associated with the former regime were prohibited. Numerous peaceful demonstrations reflecting many shades of political opinion now occur, although there has been friction in the case of one party, the Union of Democratic Nationals (UDN), which takes an aggressively anti-government line. On one occasion in October, a UDN rally was partly dispersed when government soldiers fired over the heads of demonstrators who had congregated outside the Eritrean mission in Addis Ababa. Progress toward a free press has been slow because of delays in drafting a press law, as well as a lack of newsprint and trained journalists. Still, the Amharic press contains much forthright criticism of the government and other political organizations.

Many members of the previous government have been detained. The true number is not known, but estimates range from 5,000 to over 100,000 (the latter includes interned ex-soldiers). Progress has been slow in reorganizing the judiciary, and only in November was draft legislation presented to the Council of Representatives. In the meantime, those suspected of being responsible for human rights abuses or corruption during the previous regime were held without charge. Some alleged offenders were identified by informal "people's courts," where they were

accused in public by alleged victims or their relatives. Preliminary screening of those in detention has been the responsibility of secretive committees organized by the EPRDF. Despite their closed nature, these investigations have yielded the release of substantial numbers of detainees, although for the time being members of the former ruling party, the Workers' Party of Ethiopia, are banned from traveling abroad or returning to their former employment.

Conditions in detention centers range from extremely good (the Yekatit 66 Political School, where high-ranking members of the former government are held) to poor and overcrowded (according to reports from detainees who have been held in police stations and neighborhood and provincial prisons). There have been no reports of torture or physical abuse.

Following the occupation of Addis Ababa, members of the former police force were suspended, pending a thorough reorganization of the force and the prosecution of those guilty of abuses and corruption. Policing duties were taken over by EPRDF soldiers. While the discipline of the EPRDF soldiers has been exceptionally high, and they are generally regarded as respectful of civilians, there were a number of summary executions of looters (during the occupation of Addis Ababa and immediately thereafter) and common thieves (through the end of the year). In some cases, "people's courts" have passed sentences of death for suspected common criminals, who have been executed on the spot. The government promises that the reorganization of the police and the judicial system will bring these abuses to an end.

In Eritrea, the EPLF occupied the entire territory on May 26. In doing so, it captured over 100,000 soldiers of the former government, plus dependents. Almost all of these soldiers and dependents, as well as other residents of non-Eritrean origin, were expelled from the territory shortly afterwards. Expulsions continued throughout the year, including an incident in October in which 424 non-Eritrean orphans, resident in church- and government-run orphanages in Asmara, were expelled. There have been some allegations of the use of force, and the expulsion of people who had lived most of their lives in Eritrea.

The EPLF has not cooperated fully with the transitional government in Ethiopia in allowing the use of Eritrean ports for famine-relief supplies. The EPLF did not hold a political conference or invite the other Eritrean fronts to participate in a transitional government, with the result that there is opposition to the new government in some parts of Eritrea. The EPLF has promised a referendum on independence in two years,

followed by a multiparty democracy, but has not made concessions to political opponents in the meantime.

The EPLF held a large number of detainees for a short period after its occupation of the territory, but by year's end had cut the number down to about nine hundred. It has said that these will all be brought to trial.

The Right to Monitor

Given the level of repression under the Mengistu government, it was not possible for human rights groups to exist. Since May, a number of new groups who plan to monitor human rights have been established. They are the Ethiopian Human Rights Council; the Ethiopian Congress for Democrats; the human rights committee of the Committee of Eleven, set up by academics; and a Bar Association, which is in formation. A number of the new groups have been sharply critical of certain government policies without suffering reprisals.

Both Africa Watch and Amnesty International have been able to visit Ethiopia since the new government came to power. No human rights group has yet been established in Eritrea.

U.S. Policy

U.S. policy toward Ethiopia also followed a "before and after" pattern. From January to May, the United States actively pushed for a negotiated peace. It put pressure on both sides to make concessions, and appeared to believe that the war was in a permanent stalemate. The United States in March withdrew support for the cross-border famine-relief operation into EPLF- and EPRDF-held areas, reportedly to pressure those fronts to negotiate. After protest from voluntary agencies, support for the operations was quickly restored. Meanwhile, on the government side, a major U.S. concern was the emigration of the remaining Ethiopian Jews to Israel. After prolonged stalling by the Ethiopian government — which was trying to use its Jewish population as a bargaining chip to obtain arms — the final Jews were airlifted to Israel in the dying hours of the Mengistu government.

As the peace talks opened in London on the morning of May 27, it was evident that the Ethiopian government had no option other than

unconditional surrender, and that the immediate danger was a complete breakdown in law and order in Addis Ababa due to the large number of deserting troops. Accepting a military fait accompli, the U.S. government recognized the EPRDF as the new transitional government of Ethiopia, and the EPLF as the government of Eritrea. The latter meant that the United States reversed its long-standing policy in opposition to Eritrean independence. This reversal appears to have been influenced by a desire to avoid the breakdown in law and order that followed the fall of Samuel Doe in Liberia and Mohamed Siad Barre in Somalia, as well as by the humanitarian concern of ensuring a continued flow of relief supplies. The U.S. government thus found itself in the unexpected position of supporting a government headed by the EPRDF, which until shortly before had espoused a hard-line Marxist-Leninist ideology. Herman Cohen, assistant secretary of state for African affairs, showed a remarkable flexibility during the power transfer which certainly helped to avoid what might have been high loss of life.

The U.S. government has been enthusiastic about the prospects for Ethiopia under the EPRDF-led government, although it has criticized the EPLF for the expulsions and the lack of cooperation in permitting the use of the port of Assab. This enthusiasm has led to a number of cases in which asylum seekers in the United States, mostly ethnic Amharas with sympathies for the EPRP, have had their applications refused on the grounds that Ethiopia is now at peace and progressing toward democracy. This position ignores the ongoing conflict between the EPRDF and EPRP, which is sufficient grounds for suspecting that EPRP supporters would be at risk if they were to return to Ethiopia under current conditions.

The Work of Africa Watch

In early 1991, Africa Watch published two newsletters on Ethiopia. The first was issued on March 5, one year after Mengistu's announcement of the abandonment of Marxism-Leninism. The newsletter assessed the human rights situation and concluded that the government had not made any serious effort to promote respect for civil and political rights. The second newsletter, published four weeks before the fall of Addis Ababa, addressed human rights concerns as the government crumbled, reporting abuses by all sides. Africa Watch obtained wide media coverage during the week when Addis Ababa fell and the U.S.-convened peace talks were held in London; this included numerous radio and television appearances

(BBC, CNN and others) and several published articles, including articles by the staff in *The Independent* (London), the *Nairobi Law Monthly* and the *Southern African Political Economy Monthly*.

In September, Africa Watch published an extensive report entitled *Evil Days: Thirty Years of War and Famine in Ethiopia*. The report covers the entire period since the outbreak of war in Eritrea in 1961, with two main purposes. One is to document the abuses in the numerous wars in the country over the last thirty years, drawing attention to some of the neglected wars in the south as well as the wars in Eritrea and Tigray. The second is to reveal the role of war and human rights abuses in the creation of famine. Specifically, the report documents the way in which the counterinsurgency strategy followed in the north from 1980 to 1984 was instrumental in creating the famine of 1983 to 1985. It also describes the way in which the government later used and abused internationally donated food relief to further its war aims. This aspect of the report has disturbing implications for the way relief organizations, specifically the United Nations, conduct themselves in civil conflict.

In October, an Africa Watch mission visited Ethiopia at the invitation of the Transitional Government. The delegation met with a wide range of senior government officials, including the president, all of whom spoke frankly about their difficulties and their plans for increasing respect for human rights. Africa Watch was invited to submit a memorandum concerning the treatment of the detained members of the former regime and the procedures for bringing them to trial. Africa Watch was able to visit detainees in the Yekatit 66 prison, but not in police stations. It was also possible to talk with representatives of numerous political organizations and citizens' groups, including nascent human rights organizations.

KENYA

Human Rights Developments

Nineteen ninety-one was marked by the growing number of voices in Kenya challenging the long-term denial of human rights. Late in the year, after persistent resistance, the government of President Daniel Arap Moi yielded ground to internal and external demands for greater political freedom. Immediately after international donors decided in late November to suspend new assistance for six months pending economic and political reforms, President Moi in December announced the legalization of multiparty politics. Other welcome developments included the release of the three political detainees whose detention had been officially acknowledged by the government and the decision not to carry out certain threats to the freedom of the press and the independence of the judiciary. However, the basic institutional structure of authoritarian and repressive rule remained intact.

The pressure for a multiparty political system remained the central human rights issue in 1991. The year began on a promising note with the announcement of reforms such as the end of the queue-voting system for elections, in which electors were left open to intimidation by the requirement that they stand behind a photograph of the candidate of their choice, and the promise to cease expelling government critics from the Kenyan African National Union (KANU), the single ruling party. In September, President Moi reneged on his earlier promise and began to expel dissidents from KANU. Among those expelled were opposition leaders Martin Shikuku, Masinde Muliro, Philip Gachoka, George Nthenge and Salim Ahmed.

On December 3, in a major shift, the president announced the repeal of Section 2a of the Constitution, introduced in 1982 to ban opposition groups. Until then, President Moi repeatedly had denounced supporters of the democracy movement, often by name, as "traitors" and "anarchists," and accused them of receiving foreign financing with the intention of destabilizing Kenya.

Earlier attempts to challenge KANU's monopoly of political organization were promptly suppressed. The attempts of a prominent government critic, former Vice President Oginga Odinga, to register his National Democratic Party in March were frustrated, and Oginga was

briefly detained while his house was searched in May. Later, Oginga tried to register the Forum for the Restoration of Democracy (FORD), but was also prevented from doing so. The president banned efforts to observe the first anniversary of the July 7, 1990 pro-democracy riots that left over a hundred people dead. He also issued a statement banning a public rally scheduled for October 5. The organizers had sought legal permission and the matter was pending in court at the time. The president's actions led them to withdraw their request, stating that executive interference in the judiciary had made a mockery of the judicial process. Oginga's bodyguard and over twenty others were detained on suspicions of supporting FORD. Oginga's son, Raila, who had spent most of the 1980s detained without charge or trial, was subjected to regular intimidation and, in October, fled the country.

On October 29, the Moral Alliance for Peace was established by, among others, Reverend Timothy Njoya of the Presbyterian Church of East Africa; lawyers Martha Njoka and Beatrice Nduta; the editor of the proscribed magazine *Beyond*, Bedan Mbugua; and Professor Wangari Maathai of the Green Belt Movement. The Mombasa KANU Branch chairman, Shariff Nassir, promptly declared the Alliance to be an illegal political party. On November 3, George Nthenge, a founding member of FORD, was arrested and, two days later, charged along with three others for holding an illegal meeting in Machakos; he was released on bail after pleading not guilty.

On November 1, President Moi banned a public rally called by FORD for November 16. The action was the government's most serious effort to deny the right to political participation. In a show of force, police arrested opposition leaders and broke up the pro-democracy rally. The crackdown began on the night of November 14-15, when police began arresting FORD members and their supporters in Kisumu and Nairobi. Oginga Odinga, a FORD founder, was arrested together with Gitobu Imanyara, editor of the *Nairobi Law Monthly*; Dennis Akumu, a former secretary general of the Accra-based Organization of African Trade Union Unity; George Nthenge, a FORD member and former member of Parliament; Luke Obok, also a former member of Parliament; Philip Gachoka, a businessman and FORD member; Salim Ndamwe, secretary general of Oginga Odinga's unregistered National Democratic Party; John Kamangara, a businessman; and at least five others, including Oginga Odinga's bodyguards. Some of those arrested were taken to Nairobi's Wilson airport and put on board a police aircraft and a helicopter with cardboard covering the windows to hide them. At least

eleven people were arrested in Kisumu.

The November 16 rally site — the Kamukunji grounds in Nairobi — was cordoned off by armed police and the paramilitary General Service Unit. Security forces were put on alert with paratroopers manning roadblocks around Nairobi and checking identities. Journalists were turned back.

Another eight people were arrested on the day of the rally, including Paul Muite, a government critic and chair of the Law Society of Kenya (LSK); Masinde Muliro, a former Cabinet minister and a FORD member; Martin Shikuku and Philip Gachoka, both FORD members; and two Nairobi lawyers, James Orendo and Japheth Shamalla. They faced charges of violating the Public Order Act. Oginga Odinga and Masinde Muliro were released on bail and the others appeared in court on November 18-19 and were remanded.

Between one and two dozen foreign and local journalists were harassed and arrested at the Kamukunji grounds on November 16, but were later released without charge. Miles Bredin, bureau chief of United Press International, was hit on the head with a police truncheon but avoided serious injury. Scores of FORD supporters and demonstrators were also arrested.

Hundreds of demonstrators showed up outside the police cordon at the rally site. Helicopters circled overhead as tension mounted. Security forces used tear gas, rubber bullets and baton charges to disperse thousands of demonstrators who took to the streets after opposition leaders seeking to hold the rally were arrested. Police beat demonstrators, fired shots in the air, and lobbed canisters of tear gas to break up the generally peaceful demonstrators. American and German diplomats trying to observe the rally were turned back by the police and later accused of having "masterminded" the rally.

The ensuing unrest in the area surrounding the Kamukunji grounds was easily contained, but not without bloodshed among the protestors. Stones were thrown at the police and motorists, and security forces retaliated with rubber bullets and volleys of tear gas. One person was reported to have died in the clashes when he was trampled to death by a crowd being chased by the riot police, and at least seven others, one of whom later died, received gunshot wounds from both live ammunition and rubber bullets. Later in the day, buses were stoned by protestors and barricades of burning tires were erected in the nearby suburb of Eastleigh as security forces patrolled the streets. There were also disturbances in Pumwani and Mathare after the arrest of the FORD members. In

Pumwani, a KANU office was burned down. The center of Nairobi was virtually deserted.

By November 19, at least eighty-six people had appeared in court and been arraigned or charged in connection with the banned rally. Some of the charges were dropped in late November. However, some protesters have been convicted and many are serving sentences for showing the two-fingered "V-for-victory" sign, a symbol of support for the multiparty democracy movement. Many others remain in custody awaiting trial. Among those arrested are:

- o George Nthenge, a FORD member, who was arrested in Machakos on the night of November 14-15. He was charged with five counts of intending to hold an illegal meeting, and was released on bail of 10,000 Kenyan shillings (approximately \$350) on November 19.
- o Philip Gachoka, a FORD member and businessman, who was arrested in Muranga on November 16 and charged with violating the Public Order Act. He was released on bail of 20,000 Kenyan shillings (approximately \$700) on November 19.
- o Martin Shikuku, a FORD member and former assistant minister, and Japheth Shamalla, a lawyer and council member of the Law Society of Kenya, were arrested on November 16 and each charged with five counts of violating the Public Order Act by publishing notices of the unlicensed rally. Appearing before Senior Resident Magistrate Gladys Ndeda in Kakamega, Shikuku pleaded "not guilty," was denied bail, and was remanded to custody. Shamalla refused to plead, leaving the disposition of his case to the discretion of the court, and was also remanded. On November 21, Justice John Osiemo set bond for each of them at 10,000 Kenyan shillings (\$350), and both were released. Shikuku's case was set for hearing on December 9 and 10, and Shamalla's for December 11 and 13. Thousands of demonstrators marching in the streets of Kakamega in support of the two protesters were dispersed with tear gas after they threw stones at the police.
- o Salim Ahmed Bamahriz, a FORD member who was arrested on November 25 in Mombasa after surfacing from hiding, was released after twelve hours.

An unknown number of others are still being held in custody. The whereabouts of some are still not known, including Joseph Owuor Nyongo, Oginga Odinga's bodyguard, and Morris Nyaoki, a worker.

Another significant act of political repression was the trial and conviction for sedition of George Anyona, a former member of Parliament; Edward Oyugi, an educational psychologist; Augustine Kathangu, an outspoken KANU member; and Ngotho Kariuki, a former lecturer at the University of Nairobi. The six-month sedition trial was the longest of its kind in Kenyan history. The defendants were accused of holding a seditious meeting in a bar, and two of them were allegedly in possession of a seditious publication. The trial was blatantly unfair. The accused testified that they had been subjected to torture to obtain confessions, but this claim was summarily rejected by the judge. The allegedly "seditious" publication, a copy of the journal *Africa Confidential* that contained an article about the Kenyan security service, is not banned in Kenya. None of the defendants had ever advocated violence against the Kenyan government. However, all were found guilty and sentenced to seven years in prison.

One of the more insidious aspects of the government's human rights record is its deliberate undermining of the independence of the judiciary. In May, Attorney General Matthew Muli, who had been instrumental in using the judiciary for political ends, was replaced by Amos Wako, who promptly declared that the president is above the law. There is such widespread lack of confidence in the judiciary as a system willing or capable of defending human rights that the government's welcome decision to restore security of tenure to judges is unlikely, in the short term, to allow the judiciary to recover its independence from the executive.

The Law Society of Kenya, which in October received an international human rights award from the American Bar Association, remained an important rallying point for those critical of the government's human rights record. In retaliation, the government began an intense campaign to intimidate and discredit the LSK leadership. In March, Paul Muite, a lawyer who has been highly critical of the government, was elected as chair of the LSK and immediately called for the repeal of Section 2a of the Constitution. Pro-government members obtained a court injunction to restrain Muite and eight members of the LSK Council from making any "political" pronouncements on behalf of the LSK. The LSK was also prohibited from holding its general meeting.

The LSK's conflict with the government intensified with its outspoken criticism of the role played by British expatriate judges. In May, the LSK passed a unanimous motion calling for the removal of three British expatriate judges because of their consistently pro-government rulings, including decisions upholding the legality of the one-party state and rejecting the justiciability of the human rights provisions of the Kenyan Constitution.

On October 23, Justice John Mwera found seven LSK officers guilty of contempt of court for allegedly disobeying the injunction against making political statements, and fined them 10,000 Kenyan shillings each. The judgment was seen as a partial victory because it had been feared that the officers would be sent to jail. The seven officers were: Paul Muite, chair; Willy Mutunga, vice chair; and Japheth Shamalla, Fackson Kagwe, Charles Nyachae, G.B.M. Kariuki and Martha Njoka, as Council members. The case is awaiting the decision of the Court of Appeal. Hundreds of pro-democracy supporters marched through Nairobi following the judgment.

However, one lawyer continued to be singled out for punishment. On October 31, Justice Gideon Mbiti upheld an objection by a lawyer who argued that Martha Njoka should not be allowed to represent clients in court because of her contempt-of-court offense. Although Njoka had already been fined for the contempt, and the matter was not before Justice Mbiti, nor any longer in the High Court, the justice ordered her to apologize to the High Court for her alleged contempt. Njoka immediately applied for a stay of the blatantly illegal order, but on November 4, the order was effectively upheld. Only on November 29 did the Court of Appeal grant a stay pending appeal.

The government continued to crack down on independent journals. Gitobu Imanyara was arrested and charged with publishing seditious material on account of an editorial in his *Nairobi Law Monthly* which discussed the phenomenon of tribalism and highlighted the extent to which members of the president's small ethnic group dominate senior positions in government. Imanyara was held from March 1 to May 28. During the last month in custody he was hospitalized with a serious illness, chained to his bed and kept under twenty-four hour surveillance. Charges were later dropped. Njehu Gatabaki, editor of *Finance*, was also harassed and forced into hiding in late March. Paul Amina, a freelance journalist and former political detainee, was arrested on August 16 at the International Press Center in Nairobi and detained for two days after he publicly identified a Special Branch officer. Two other journalists,

Macharia Gaitho and Julius Bargorett, were beaten with sticks by security policemen, and had their cameras smashed and their notebooks confiscated, while covering a meeting in April addressed by Nicholas Biwott, the former minister for industry; Biwott has been accused of official corruption and involvement in the February 1990 murder of former Foreign Minister Robert Ouko.

Those associated with a number of journals were subjected to harassment, and copies of the journals were confiscated by the police. These include the *Nairobi Law Monthly*, *Finance*, *Society* and copies of one edition of *The Observer* of London, which contained an article critical of the Kenyan government. Four plays were also refused licenses on the grounds of being "too political" for Kenyan audiences. They included a Swahili version of George Orwell's "Animal Farm."

The government seized five thousand copies of *Newsweek* magazine and all copies of the *International Herald Tribune* for November 17-19 because of articles describing government repression in Kenya. *Newsweek* carried an article critical of Kenya's one-party system, its human rights record and its opposition to demands for multiparty democracy. The *International Herald Tribune* carried reports on the arrest of opposition leaders and the government's suppression of the pro-democracy rally on November 16.

The harassment of government critics has also taken other forms. The freedom of movement of several prominent Kenyans was severely restricted in 1991. The passport of Gitobu Imanyara was seized to prevent him from traveling to Athens to collect the Golden Pen of Freedom award. The passport was never returned, preventing him in September from traveling to the United States to receive the Nieman Foundation award from Harvard University. Mohamed Ibrahim, a human rights lawyer, was denied the opportunity in the fall to travel to the United States. Immigration authorities refused to renew his passport unless he obtained a "pink card" required for all Kenyans of Somali origin since a national screening in 1989 and 1990. Ibrahim had publicly refused to participate in this invidious discrimination among Kenyan citizens.

The passports of several Kenyans were seized to prevent them from traveling to the inaugural conference of the Institute for the Promotion of Human Rights in Africa. They included Oginga Odinga, Martin Shikuku, and Denis Akumu, described above, and James Orengo, a lawyer. Akumu and Shikuku were physically removed from an airplane at Nairobi airport.

Three prominent government critics were released from detention during the year: Charles Rubia, Kenneth Matiba and Raila Odinga. However, an incident at the Nairobi headquarters of the Special Branch highlighted the problem of the many ordinary people who are believed still in detention, sometimes having spent years in custody. On July 14, Bernard Kiragu, who had been detained without trial for ten months, was killed in a shootout (in which a senior police officer was also killed) in the detention center at Nyayo House, Nairobi. Kiragu's detention had not been officially acknowledged, suggesting that other unidentified prisoners are also languishing in detention. Kiragu was to have been the key prosecution witness in the above-mentioned treason trial.

Allegations of torture continue to be made without prompting investigations by the government. During the sedition trial described above, sworn affidavits of torture and inhuman treatment were presented to the court but never investigated. Others who have alleged torture and inhuman treatment while in police custody include Koigi wa Wamwere, Rumba Kinuthia, Mirugi Kariuki and Geoffrey Kuria Kariuki, all of whom are facing treason charges. In his affidavit of September 16, 1991, Mirugi Kariuki stated that the police had taken him shortly after his arrest on October 8, 1990 to a dungeon in Nyayo House in Nairobi where he was tortured and subjected to cruel, inhuman and degrading treatment. He was denied food, bedding and clothing and was held blindfolded and incommunicado for twelve days. On October 19, 1990, he was charged with treason before the chief magistrate, and on March 27, 1991, after several appearances before the chief magistrate, he was served with pretrial documents. Kariuki claims that he is being held in the same block as three hundred convicts condemned to death; denied newspapers, magazines and radio; forced to sleep on the floor without a bed or mattress; and generally treated worse than the convicted prisoners. On October 31, Justice Mboghohi Msagha ruled that Kariuki was being lawfully held pending trial for treason.

The mysterious death and apparent murder in February 1990 of former Foreign Minister Robert Ouko became a major embarrassment to the government in 1991 and resulted in the arrest of top government officials. It also became an important source of information about human rights abuses and corruption among top government officials. A former Scotland Yard detective, John Troon, giving evidence before the Public Commission of Inquiry into the death of Ouko, identified his two prime suspects as Nicholas Biwott, the former minister of energy and industry, and Hezekiah Oyugi, then head of internal security. He also alleged that

the Kenyan police had tried to obstruct his investigation. On November 19, Biwott was dismissed from office while attending a meeting in Vienna. He was arrested upon his return to Kenya on November 20 and detained for questioning and further investigation in connection with the murder. Also detained for questioning on November 26 were Hezekiah Oyugi; Julius Kobia, a provincial commissioner; Jonah Anguka, a district commissioner; and George Oraro, the lawyer for the Ouko family who has been named by Ouko's brother, Barak Mbajah, as one of the those who lured Ouko out of his house on February 13, 1990, the day he disappeared.

At the same time, in an act of suspect motive, President Moi dissolved the Public Commission of Inquiry, which had spent 246 days listening to evidence about the murder. He ordered the three judges to submit their report to him before the end of January 1992. Before the president's move, the three commissioners had adjourned proceedings because of alleged intimidation by the state security services, including ransacking of their hotel rooms and bugging of their office telephones. Fearing for their lives, they said they would not continue with the hearings until their personal safety was guaranteed.

On November 27, Julius Kobia was released after questioning but five other people were arrested including potential witnesses Selina Were, Matthew Onyango K'Oyoo and John Eric Ouko Reru and suspects Paul Gondi and Police Inspector Washington Ajwoya.

In an affidavit sent to the Commission from the United States where he has sought refuge, Ouko's brother alleged that he had been tortured and subjected to inhuman treatment in an attempt to force him to cooperate in what he described as the official cover-up of his brother's murder.

John Troon alleged that Hezekiah Oyugi, who was dismissed as head of internal security only to be named to the highly lucrative position of executive chairman of General Motors Kenya (he has since lost the position), had blocked the announcement of Ouko's death as a murder and announced it as suicide instead. John Troon and Dr. Ian West of Guys Hospital in London had told Hezekiah Oyugi that Dr. Ouko had been murdered and had not committed suicide, as claimed by a senior Kenyan government pathologist.

Allegations of corruption by top government officials soured Kenya's relations with international donors, which responded to the endless corruption charges and political repression by suspending or threatening to suspend aid. A meeting of the Paris Club on aid to Kenya was held on

November 25-26, chaired by the World Bank. Kenya currently receives nearly \$1 billion a year in foreign aid, which is about thirty percent of its development budget, and the Paris meeting was seen as a major opportunity for Western governments to demonstrate their opposition to the abuse of human rights in Kenya. At the end of the meeting, the World Bank said that it would wait for six months to see whether Kenya instituted wide-ranging political and economic reforms in light of its poor human rights record. The communique issued after the meeting "underlined the importance of the rule of law and respect for human rights, notably the basic freedoms of expression and assembly."

The World Bank also said at the end of the meeting that it had approved two loans for Kenya totaling \$86 million, but warned that it might cut off all but the most basic of project loans if the country failed to reform its economy and cut government corruption. It said that Kenya would receive no aid for its energy sector — a \$140-160 million loan was withheld — unless Minister Biwott was removed. Biwott was apparently shielding \$600 million worth of projects from scrutiny by the World Bank, including the construction of geo-thermal and hydroelectric power plants and the upgrading of the Mombasa refinery. Britain also held back a shipment of oil to Kenya in 1991 for fear that proceeds from it would find their way into Biwott's personal bank account. His demotion to industry minister and his subsequent arrest and dismissal from office altogether indicate that President Moi is desperate to continue attracting foreign investment.

During the past decades, Kenya's once-independent universities have gradually been stripped of their autonomy. Political interference in the appointment of academic staff and the content of courses has become commonplace. Violations of academic freedom continued throughout 1991. In mid-1991, one student was killed after being shot by policemen and several others were injured during clashes between riot police and students on the campus of Moi University in Eldoret. The university was closed. The source of the conflict — the reduction in student allowances — also led to the closure of Kenyatta University. The government's long-standing policy of co-opting academics to defend its record was brought into sharp focus by the publication in November of an open, unsigned letter attacking the pro-democracy movement that purported to be sponsored by 140 academics. A number of academics were apparently threatened with reprisals if they refused to be associated with the letter.

The treatment of ethnic Somalis in Kenya continues to be an important source of human rights violations. Following the excesses of

the "screening"⁵ of all ethnic Somalis in 1989 and 1990, a further crackdown began in June 1991 when homes of ethnic Somalis were searched and hundreds were arrested. Refugees fleeing the civil war and anarchy in neighboring Somalia were also subjected to abuse. Refugees who began arriving on the coast in January were frequently detained on board their vessels as Kenyan authorities refused to allow them to disembark. The action led to many deaths, as overloaded boats capsized and vital relief was withheld. On May 21, the Lamu district authorities rounded up Somali refugees and boat owners with their staff, and forced them on board a vessel which was towed to sea by a Kenyan naval patrol ship; Somali refugees elsewhere in Kenya were also forced on board so they could be deported to Somalia. On May 24, sixteen refugees died when their boat capsized. On May 25, a Kenyan patrol ship transferred forty-eight refugees, most of them women and children, to a leaking fishing boat with broken engines; it capsized immediately, killing twenty-one of the refugees. Thereafter, many of the refugees arriving by boat were not allowed to disembark despite terrible overcrowding and a lack of sufficient water and food. At least two children died. Many other refugees were interned in poor conditions in camps and denied access to humanitarian supplies. By April, it was estimated that almost ten thousand Somalis were living in Jomo Kenyatta showground without proper amenities. Many refugees claimed that they had not received anything to eat for a week.

The Right to Monitor

There are no established human rights groups in Kenya, although a number of churchmen, lawyers and journalists have documented and publicized human rights abuses. Many of these individuals have been the target of government reprisals, as described above.

⁵ All Kenyans of Somali origin and all Somali citizens were required to register at special centers and obtain special pink cards to be eligible for any state service. See Africa Watch, *Taking Liberties*, July 1991.

U.S. Policy

While several years ago Kenya was the largest recipient of U.S. foreign assistance in sub-Saharan Africa, U.S. aid to Kenya in 1991 was sharply limited. In late 1990, Congress enacted legislation placing strict human rights conditions on the Bush Administration's proposed package of \$15 million in military aid and Economic Support Funds (budgetary support) for Kenya. Before that aid could be expended, the Administration was required to issue a formal certification that the Kenyan government had: taken steps to charge and try or release all prisoners detained for political reasons; ceased any physical abuse or mistreatment of prisoners; restored the independence of the judiciary; and restored freedom of expression. To its credit, the Administration did not attempt to certify that these conditions had been met, even after the Kenyan government enacted some judicial reforms and released the bulk of the most prominent prisoners detained for peaceful political expression.

The State Department also denied Kenya funding under a special account for fiscal year 1991 which included \$15 million in military aid aimed at promoting "biological diversity in Africa" — an anti-poaching and wildlife conservation program.⁶ The State Department made the determination that the human rights legislation concerning other foreign aid to Kenya also governed the biological diversity program.

The Bush Administration deviated from an otherwise positive human rights policy in Kenya on one important occasion in 1991. In February, the Administration provided \$5 million in military assistance to Kenya, drawing the aid from unobligated funds that Congress had withheld in 1990 as a protest over gross abuses of human rights in July of that year. By dipping into the 1990 "pipeline," the Administration avoided the human rights conditions governing the 1991 funds. The assistance was provided as a payoff to the Moi government for providing refuge to a group of several hundred Libyan prisoners of war in Chad whom the United States had been arming and training to use against the Libyan government of Moammar Qadhafi. When the Chad government of President Hissein Habre fell to forces that were friendlier to Libya, Kenya agreed to provide refuge for the prisoners. Particularly

⁶ Section 5(e) of Public Law 101-513, the Foreign Assistance Appropriations Act.

unfortunate was the State Department's insistence on justifying the aid not as a reward for taking the Libyans but by pointing to the "limited steps" that Kenya supposedly had taken on human rights, as spokesman Richard Boucher did on March 12.

The provision of the \$5 million caused an uproar in Congress, with a number of members issuing sharp protests. The State Department had additional reason to regret its gesture of support; on March 1, only days after the aid was sent, the Kenyan authorities arrested human rights lawyer and journalist Gitobu Imanyara. On March 1, State Department spokesman Richard Boucher issued a strongly worded statement in Imanyara's defense, saying that the United States was "dismayed" by the arrest and calling upon the Kenyan government to release Imanyara without delay. Later, on May 5, Assistant Secretary of State for African Affairs Herman Cohen took the unusual step of telling the Senate Appropriations Committee that he felt personally betrayed by the incident.

The \$5 million payoff was the last time that Washington granted any foreign aid to Kenya. Throughout the rest of the year, aid was limited and the Administration became increasingly explicit in its condemnation of the Kenyan government's corruption and human rights abuses. (The two issues are closely related; numerous human rights abuses, including the murders of Kenyan Foreign Minister Robert Ouko and Bishop Alexander Muge,⁷ appear to have been related to their outspoken denunciation of government corruption.)

U.S. Ambassador Smith Hempstone was so explicit in his criticisms that he had practically become *persona non grata* in Kenya by late November. The U.S. ambassador described the November 14 arrest of democracy movement leaders as "a bloody mess," and says he told President Moi that "the best thing he could do was to release these people as quickly as possible."⁸ The Embassy issued a written statement as well, calling the arrests "a blatant interference with the civil and human rights

⁷ A public critic of "land-grabbing" and corruption among senior government officials, Muge was killed in a mysterious car accident on August 9, 1990, days after Minister of Labor Peter Okando threatened his life. He is widely believed to have been murdered.

⁸ Jane Perlez, "Riot Police Break up Opposition Rally in Kenya," *The New York Times*, November 17, 1991.

of these individuals," and criticizing the Kenyan government for abrogating the rights of free speech and peaceful assembly.⁹ The Kenyan authorities responded in a fury, condemning "the open involvement of United States diplomats who have masterminded and abetted the supposed opposition movement in Kenya." Ambassador Hempstone responded with his characteristic bluntness, "If that guy [President Moi] doesn't stop telling lies about me, I'm going to start telling truths about him."¹⁰ When asked on November 19 about the "row with Kenya," State Department spokesman Boucher gave strong reinforcement to Ambassador Hempstone's message:

You know the Kenyan Foreign Minister made some statements which we took exception to. We put up a statement yesterday saying that our ambassador there is the President's representative and we had confidence in what he was doing. Part of U.S. policy is to raise issues of human rights, and we and our ambassador will continue to do that.

Ambassador Hempstone was no less frank on the subject of corruption, stating: "I don't know if Kenya is at the head of the class when it comes to corruption but they're a contender. The state of the economy is extremely fragile, and corruption has a deleterious effect."¹¹ The U.S. Embassy provided an extensive report to the international press about President Moi's personal involvement in skimming foreign investments in Kenya.¹²

The outspokenness of the Bush Administration on the subject of Kenyan corruption and human rights violations clearly influenced the November 25 meeting of Kenya's international donors in Paris. Not a single international donor pledged to provide foreign assistance to Kenya, in contrast to \$1 billion in international pledges received the previous

⁹ *Ibid.*

¹⁰ *Ibid.*

¹¹ Jane Perlez, "Aid for Kenya cut as Donors Cite Corruption," *The New York Times*, October 21, 1991.

¹² *Ibid.*

year. Following the meeting, in a November 26 hearing before the House Subcommittee on African Affairs, Secretary Cohen stated that the crackdown on November 14 and 16 had a far-reaching effect on international aid to Kenya. According to testimony at the same hearing by George Lewis, acting director of Eastern African affairs at the U.S. Agency for International Development (USAID), the United States expected to provide Kenya with \$47.1 million in development assistance for fiscal year 1992, but just before the Paris meeting, USAID rewrote its aid plan and decided to limit U.S. assistance to \$19 million in funds that could be channeled through private voluntary organizations rather than the Kenyan government. Secretary Cohen reiterated that no military aid would be provided, given the current human rights conditions in U.S. law.

As noted, the World Bank stated publicly at the Paris donors' meeting that "levels of aid for Kenya depend on clear progress in implementing economic and social reform" and indicated that no aid would be forthcoming from the bank for the next six months.¹³ The action was extremely important not only in its own right but also as a signal to private banks that investment in Kenya is a bad risk given the government's governance record.

In the aftermath of the donors meeting, the Kenyan government abruptly announced that a top official who is personally close to President Moi and known to be deeply involved in corruption and violence, former Energy Minister Nicholas Biwott and the former head of internal security, Hezekiah Oyugi, were being held for questioning about the murder of Foreign Minister Ouko. The arrest of formerly "untouchable" high officials is a clear sign that U.S. influence has been extremely important in Kenya.

British Policy

Until late in 1991, British policy was consistently supportive of the Kenyan government, reflecting strong commercial and military ties. (Britain outranks the United States as both an aid donor and a commercial partner.) The British government's actions indicate a

¹³ Associated Press, "World Bank Says Future Aid to Kenya Depends on Reforms," November 26, 1991.

continuing lack of interest in human rights in Kenya.

Despite Foreign Secretary Douglas Hurd's announcement in June 1990 of a "breakthrough" policy intended to tie British aid to respect for human rights and multiparty democracy, Lynda Chalker, the minister for overseas development, said on a visit to Kenya in June 1991 that British aid to Kenya would continue as before. Contradicting earlier statements by the foreign secretary that British aid to Africa would be linked to the development of a pluralist political system, she said that Britain had "no intention of dictating what kind of political systems to adopt." In August, Minister Chalker defended Kenya's human rights record and emphasized that Britain would not bow to pressure to reduce aid to Kenya. She dismissed criticism as "claptrap" and "bluster" and argued that Kenya's human rights record was better than that of many other developing countries and that its society was more open.

On a visit to Kenya in September, Foreign Secretary Hurd reiterated that it would be "bizarre to pick Kenya as having a particularly bad record on human rights." However, Hurd did make a strong general statement in favor of multiparty democracy, stating that "the arrival of multiparty politics is going to happen and in my mind is desirable." Hurd also met with two leaders of the movement for multiparty democracy, FORD members Martin Shikuku and Masinde Muliro.

On November 19, three senior British Privy Counsellors, Sir David Steel, Sir Bernard Braine and Peter Shore, tabled a motion on Kenya's human rights record in the House of Commons. They condemned the arrests of supporters of multiparty democracy, noted with concern the repeated attempts by the Kenyan government to thwart the processes of democracy, and urged the British government to express its concerns about the gap between Kenya's actions at the time and its agreement at the Commonwealth Conference in October to respect human rights. The motion has yet to be debated.

On November 20, Britain again urged Kenya to release government critics arrested during the crackdown and repeated calls for the government to tolerate legitimate dissent. In a statement to Parliament, Minister Chalker said, "We have told the government that oppression of opposing views is not the way forward and we have called upon them for further progress toward democracy." Shortly before the donors' meeting in Paris, Minister Chalker said, "Donors are going to be tough and that includes Britain." Britain joined the aid suspension agreed to at the meeting.

The Work of Africa Watch

Africa Watch's work on Kenya centered on the publication in July of a comprehensive report, *Kenya: Taking Liberties*. The report is the most wide-ranging evaluation of Kenya's human rights record ever published. The press officer of the Kenyan High Commission in London stated in an August letter to *The Guardian* that the government planned to release a detailed rebuttal. None has yet been issued. Related articles and letters were published by Africa Watch staff in *The Nairobi Law Monthly*, *The Nation*, *Legal Times*, *Africa Report* and *The Guardian* (London).

Africa Watch also launched campaigns on a number of specific issues. These include government actions against the *Nairobi Law Monthly* and its editor, Gitobu Imanyara; government restrictions on academic freedom, and U.S. and British policy toward Kenya.

An Africa Watch representative visited Kenya in February and met with many human rights activists and government officials. The government continued to deny a visa to the Executive Director of Africa Watch. On February 12, Africa Watch produced a memorandum to congressional offices analyzing Kenya's failure to meet human rights conditions on aid contained in U.S. law. Further updates were also sent to congressional offices on March 1, April 1, June 6, July 29, August 1 and September 25.

LIBERIA

Human Rights Developments

The widespread killing and brutality associated with Liberia's civil war¹⁴ have subsided since the November 1990 cease-fire. However, the human rights situation in Liberia continues to be marked by abuses ranging from extrajudicial killing and torture to restrictions on freedom of movement and intolerance of dissent. These violations are particularly evident in the ninety percent of the country controlled by Charles Taylor's National Patriotic Front of Liberia (NPFL), but civilians are also victimized by Prince Johnson's Independent National Patriotic Front of Liberia (INPFL) and by former President Samuel Doe's army, the Armed Forces of Liberia (AFL). The country remains divided among these three armed factions and the ECOMOG peacekeeping force.¹⁵ Only the interim government led by Amos Sawyer, which governs the capital of Monrovia but has no army, has not been responsible for human rights abuses.

¹⁴ The war in Liberia began in late December 1989 and gathered momentum throughout most of 1990. The conflict began in Nimba County, in the northeast, where Charles Taylor's forces attacked. The Liberian army responded with a brutal counterinsurgency campaign, killing civilians indiscriminately, burning villages, looting and raping. The victims were primarily members of the Mano and Gio ethnic groups. Doe's government was particularly hostile toward these groups because Thomas Qwiwonkpa, a former general from Nimba county who led an abortive coup in 1985, was a Gio. In the aftermath of the coup attempt, Doe's soldiers engaged in bloody reprisals against real and suspected opponents, targeting mostly Gios and Manos, an ethnic group closely related to the Gios. As war resumed in 1989 and 1990, all sides to the conflict committed egregious human rights abuses.

¹⁵ ECOMOG, or the Economic Community Monitoring Group, includes forces from five countries of the Economic Community of West African States (ECOWAS): Gambia, Ghana, Guinea, Nigeria and Sierra Leone. ECOMOG entered Liberia as a peace-keeping force on August 24, 1990, but soon took on an offensive role against Taylor's NPFL. ECOMOG sought to neutralize Taylor's troops, install an interim government and organize free elections.

Civilians in NPFL territory, which covers all of Liberia except the capital, no longer face the atrocities of all-out war. Nevertheless, they suffer the capricious actions associated with a military occupation — arbitrary arrest, physical abuse, confiscation and destruction of property, and restrictions on freedom of movement and expression. Underlying these problems is the perception among NPFL "fighters" that they are a law unto themselves. Many of them are young, undisciplined and unpaid. While security in a given area depends largely on the discipline exercised by the local commander, individual fighters have considerable latitude to arrest, detain, extort, threaten and sometimes injure civilians.

Incidents of arbitrary arrest and restrictions on civilians' movements are particularly evident at NPFL checkpoints when civilians attempt to travel to or from NPFL territory. To move between Monrovia and the interior of the country, a special pass must be obtained from the NPFL. Liberian civilians have a particularly difficult time obtaining these passes. Many civilians attempting to travel to Monrovia complain of beatings, detention and harassment by fighters, and some have been forced to turn back. Out of desperation, some Liberians attempt to make it to Monrovia on bush roads. Others arrange to pay fighters significant sums of money to take them on these roads. In June, for example, a twenty-year-old man paid a fighter to take him from Kakata to Monrovia. The fighter turned him in to NPFL authorities at Mt. Barclay, in the buffer zone between NPFL territory and ECOMOG-controlled Monrovia, claiming that the man had been engaging in "reconnaissance."¹⁶ The young man was jailed for about two days before being released because another fighter happened to know him. He was detained again almost immediately by the same fighter who had arrested him, but managed to escape with the assistance of a woman fighter.

Ethnic conflict, one of the tragic legacies of the Doe regime, remains a live issue, particularly in Grand Gedeh county, which is populated largely by the Krahn ethnic group. As recently as late July, fighting continued between the NPFL and a Krahn resistance movement. Civilians were subjected to abuses by the NPFL reminiscent of the fighting in 1990, including indiscriminate killings, targeting of Krahn and Mandingo people, burning of villages and widespread looting. These violations were

¹⁶ It is fairly common for NPFL fighters to charge civilians with "reconnaissance," a blanket charge which means that they are suspected of spying on the NPFL, usually in the service of ECOMOG.

particularly evident in July during an NPFL offensive on Zia Town, on the eastern border of Grand Gedeh county. Although difficult to document, human rights violations have also been attributed to the Krahn resistance.¹⁷

Prince Johnson and the INPFL remain armed on their base at Caldwell, on the outskirts of Monrovia. They have been responsible for summary executions, arbitrary arrest and physical abuse of civilians in the Caldwell area. In late July and early October, Johnson ordered summary executions of at least six and possibly up to nine fighters and civilians. The interim government, lacking any troops, is effectively powerless to exert control over Johnson, since he does not recognize its authority. ECOMOG has avoided using force against Johnson, since it would lead to renewed fighting.

The AFL soldiers remain armed in their base at the Barclay Training Center and at Camp Schiefflin, and are themselves responsible for abuses against civilians in Monrovia, including looting, beating and harassment of civilians. Civilians are particularly fearful of these soldiers, who were closely associated with Doe's brutal reign. On June 5, for example, AFL soldiers attacked Sando Wayne, an assistant minister of the interim government — beating him, breaking his arm and knocking him unconscious — apparently because he was driving one of Doe's old cars.

Liberia's conflict has already spilled into neighboring countries in the form of some 750,000 refugees — a third of Liberia's pre-war population — who have fled to Guinea, Ivory Coast, Sierra Leone and Ghana, among other countries. According to the U.S. State Department's Refugee Bureau,¹⁸ as of July 1991 there were an estimated 227,500 Liberians in the Ivory Coast, 342,000 in Guinea,¹⁹ 6,000 in Ghana, and smaller numbers in Nigeria, Gambia and Mali. There had been some 125,000

¹⁷ The composition of these forces is not definitively known. Many are former soldiers of the AFL, but others appear to be recent recruits from the civilian population.

¹⁸ Testimony of Princeton N. Lyman, director of the Bureau for Refugee Affairs, before the House Subcommittee on African Affairs, July 16 1991.

¹⁹ The UNHCR estimates that since July an additional 100,000 refugees have entered Guinea from Sierra Leone, making the total number of refugees in Guinea over 400,000.

Liberians in Sierra Leone, but after a March incursion by the NPFL, the number of Liberian refugees there was reduced to 10,000. Liberians continue to leave their country because of ongoing insecurity, though in much smaller numbers. There are also hundreds of thousands of displaced persons within the country. Monrovia has swollen to almost double its pre-war size, with an estimated population today of at least 800,000.

Combat has been waged recently on the Sierra Leone border between the NPFL and the Sierra Leone military, which is allied with a Krahn-based Liberian resistance group known as the United Liberation Movement of Liberia (ULIMO). Until late July, there was also fighting between the NPFL and Krahn fighters in Grand Gedeh, near the Ivory Coast, whose government is fearful of armed attacks extending into its territory. In several areas, the possibility of a new round of ethnic warfare and brutality remains quite real.

Throughout the year, the Liberian factions took part in a series of meetings to discuss peace and elections. Much of the groundwork was laid in November 1990 with the cease-fire, signed in Bamako, which was based on an ECOWAS peace plan.²⁰ The cease-fire was followed by a meeting of the warring factions in Banjul, Gambia, in December 1990, and then in Lomé, Togo, in February 1991. In Lomé, it was decided that the All Liberia Conference would begin in Monrovia on March 15.

Taylor did not attend the All Liberia Conference, citing fears for his security.²¹ An NPFL delegation went to the conference, but walked out a week later. In April, at the conclusion of the conference, Amos Sawyer was elected president of the Interim Government of National Unity

²⁰ The plan called for organizing a meeting of political parties, interest groups and the warring factions to negotiate a cease-fire and to establish a broad-based interim government. The leaders of the warring factions were to be excluded from heading the interim government, and the interim president would be ineligible to run for president in the ensuing general elections.

²¹ Taylor's security concerns were not wholly unjustified. In September 1990, when former President Doe left his heavily guarded mansion, he was captured and tortured to death by Prince Johnson. Representatives of both the Nigerian and Togolese governments made special trips to Taylor's headquarters in Gbarnga to assure him that they would guarantee his security in Monrovia, but to no avail.

(IGNU). The NPFL did not participate in the voting and refused to recognize the legitimacy of the IGNU.

A series of meetings have since been held in Yamoussoukro, in the Ivory Coast. The meetings have focused on the question of elections — not only logistics but also the need to disarm all warring factions and to confine them to their bases during the campaign and balloting. Four such meetings took place in 1991 — in June, July, September and October. At the September 17 meeting, Taylor agreed to disarm his troops under the supervision of an expanded peacekeeping force and to confine his fighters ("encamp" them) as part of the ongoing peace process, provided that the composition of ECOMOG was changed by adding Senegalese troops and reducing the number of Nigerian troops. Until then, Nigerians had made up approximately eighty percent of the ECOMOG force, and Taylor has always considered them to be particularly hostile to the NPFL. Senegal and the other Francophone countries of West Africa have been perceived as more supportive of Taylor.

On October 30, a sixty-day timetable was agreed to for disarmament, beginning November 15, with elections to follow in six months. The agreement included a provision for opening roads, ports and airports so refugees and displaced persons will be able to register to vote. Meanwhile, a committee of West African states has been formed to help to organize elections.

A potential obstacle to peace is Prince Johnson's reported refusal to disarm his fighters so long as he is excluded from the formal peace process. Johnson has been kept out of the process since INPFL withdrew from the interim government in August after the government publicly condemned Johnson for executing at least four and possibly six fighters and civilians in Caldwell. Johnson now wants to participate in the peace talks as part of a separate entity.

The Right to Monitor

The human rights movement in Liberia is extremely weak. Two human rights groups formed in Monrovia during 1991: the Liberian Human Rights Chapter and the Association of Human Rights Promoters. Although neither group is obstructed by the authorities in Monrovia, their activities appear to be limited. In late November, the Catholic Church in Monrovia reportedly formed a Justice and Peace Commission which intends to monitor human rights. There are no known human rights

groups operating in NPFL territory.

The frailty of the Liberian human rights movement is both a legacy of the severe repression of all independent activity under former President Doe and a reflection of the chaotic and devastated condition of the country today. The situation is aggravated by the tight restrictions on freedom of movement between Monrovia and the NPFL-controlled interior. It is extremely difficult for Liberians in Monrovia to obtain passes from NPFL authorities to travel to the interior to gather information, and it is equally difficult for civilians in the interior to visit Monrovia to report information.

In August, a representative of Africa Watch was able to obtain a pass from the NPFL to undertake fact-finding in the interior. However, NPFL authorities did not permit a delegation from the New York-based Lawyers Committee for Human Rights to travel to the interior in September. Accordingly, the attitude of the NPFL authorities toward international human rights monitoring remains inconsistent.

U.S. Policy

The United States does not recognize any government in Liberia — either the interim government of Amos Sawyer or the administration of Charles Taylor. The Bush Administration maintains a policy of neutrality, and endeavors to maintain ties with all factions. The justification for this position, according to the State Department, is that the United States recognizes countries, not governments, and that the U.S. ambassador will present his credentials only to a unified government that has been chosen through free and fair elections.

A troubling aspect of this policy of "neutrality" is that the Bush Administration has apparently interpreted it to justify U.S. silence in the face of continuing human rights abuses. In testimony on Liberia on July 16, before the House Subcommittee on African Affairs, Herman Cohen, the assistant secretary of state for African affairs, barely mentioned human rights violations. His only comment touching on the subject was to say, "Most tragically, horrific human rights abuses have been perpetrated by the combatants on the civilian population of all ages and ethnic groups." He did not elaborate or attribute responsibility for particular abuses.

In September, Vice President Quayle used his visit to Nigeria and the Ivory Coast to send a strong signal of support to the ECOWAS peace

process, stating "we believe that ECOMOG is the appropriate vehicle to resolve this conflict." However, none of the vice president's public statements mentioned human rights in Liberia.

By glossing over the tragic human rights situation in Liberia, the Bush Administration has squandered an opportunity to encourage improvements by specifically condemning particular abuses. For example, Charles Taylor's NPFL should have been criticized for ongoing indiscriminate killing of civilians, arbitrary arrest, and restrictions on freedom of movement and expression. The Administration should also have expressed concern over indiscriminate killings and other violent abuses during the fighting in Grand Gedeh county over the summer. Similarly, Prince Johnson and the INPFL should have been criticized for summary executions, arbitrary arrest and harassment of civilians.

U.S. Embassy representatives in Monrovia are taking a similar "hands-off" approach to human rights violations, refraining from investigating or publicly protesting abuses. Although Embassy representatives assert that their ability to monitor developments in Taylor territory is undermined because they are usually unable to obtain NPFL permission to travel in the interior, a considerable amount of information is available in Monrovia itself, and Embassy officials have on occasion been able to enter the interior. U.S. officials should use even this limited access to investigate and publicly condemn particular cases of abuse. Moreover, the very fact that U.S. officials are often prevented from traveling in the interior should be publicized, since it reflects the kind of controls that are exercised by the NPFL.

The United States has a special responsibility toward Liberia, given both the long-standing historical ties between the countries and the role played by U.S. support for the abusive Doe government in setting the stage for the current crisis. That responsibility is heightened by the tendency of European governments and international agencies to regard Liberia as a "U.S. problem" which the United States should take the lead in solving.

However, the Bush Administration has been trying to distance itself from the Liberian disaster, calling for "an African solution to an African problem." This contrasts markedly with the past close U.S. involvement in Liberia, particularly the policy of supporting the cruel and corrupt regime of President Doe while minimizing its egregious human rights abuses. During most of the 1980s, the Reagan and Bush Administrations spent half a billion dollars in foreign aid for Liberia, making it the largest recipient of U.S. aid in sub-Saharan Africa. The massive infusion of

money served to prop up the regime, despite overwhelming evidence that Doe was vicious, unreliable and had no intention of keeping his promises about instituting democracy.

To its credit, the United States has taken steps to help rebuild the nation that its abusive client destroyed by becoming the largest donor to the Liberian relief effort; the United States currently provides more than sixty percent of the international contribution. According to a State Department document published in July, U.S. assistance since the Liberian conflict erupted has totaled \$131.8 million, including \$112.1 million in food for peace, \$12 million for refugee programs in neighboring countries, \$4.8 million in Agency for International Development grants to international organizations and private relief groups, and \$2.8 million in Economic Support Funds to assist ECOMOG's humanitarian assistance activities.²²

In a statement on September 25, State Department spokesman Richard Boucher expressed support for "regional efforts to bring about disarmament and free and fair elections in Liberia." Toward this end, he announced that the United States would immediately grant \$3.75 million in military aid for fiscal year 1991 to support the ECOMOG participants in the peace process who were "in the most dire financial circumstances,"²³ as well as \$500,000 in peacekeeping funds to ECOWAS. On October 3, State Department spokeswoman Margaret Tutwiler reported that the United States was providing an additional grant of \$3.3 million to ECOWAS "to help defray expenses of the ECOMOG peacekeeping force in Liberia, in connection with Senegal's recent decision to contribute troops." The United States encouraged Senegal to join ECOMOG when President Bush met with Senegalese President Abdou Diouf in Washington in September and committed the United States to provide financial support to Senegalese troops.

We welcome the recent U.S. efforts to give momentum to the peace process as the mechanism most likely to curtail human rights abuses in Liberia. However, U.S. silence about ongoing human rights abuses

²² *Liberia Refugee Crisis: Fact Sheet*, Department of State, Bureau for Refugee Affairs, July 1991.

²³ According to the announcement, the United States would provide \$1 million to Senegal, \$1 million to the Ivory Coast, \$500,000 to Ghana, \$500,000 to Guinea, \$500,000 to Sierra Leone and \$250,000 to Gambia.

suggests a danger that hopes for peace will be allowed to overshadow public concern about respect for human rights. To avoid repeating the mistakes of the past, human rights issues must figure prominently in U.S. policy toward Liberia, and compliance with internationally recognized human rights standards must be an integral part of any eventual peace agreement.

The Work of Africa Watch

Throughout the year, Africa Watch followed developments in Liberia, trying to alert the press and public about human rights concerns. In April, Africa Watch published *Academic Freedom and Human Rights Abuses in Africa*. The report details human rights violations against the academic community in fourteen African countries, including Liberia. Although the University of Liberia is currently in ruins, having been destroyed during the fighting in July 1990, the chapter on Liberia discusses the attacks on the university throughout the 1980s under the Doe regime.

In August, an Africa Watch researcher traveled to Liberia — both Monrovia and territory controlled by the NPFL — and to refugee areas of the Ivory Coast. The purpose of the mission was to document the human rights situation in Liberia since the November 1990 cease-fire — also the time of Africa Watch's last comprehensive report on human rights in Liberia. Since the cease-fire, international press attention to Liberia has waned dramatically. In October 1991, Africa Watch published a newsletter based on the mission, "Liberia: The Cycle of Abuse, Human Rights Violations Since the November Cease-fire," which documents abuses by the three warring factions — Charles Taylor's NPFL, Prince Johnson's INPFL and the AFL — and discusses the role played by the United States.

In addition to the newsletter, Africa Watch published articles on Liberia in *The Atlanta Journal and Constitution* on September 28, in the October 14-20 edition of *West Africa*, and in the November-December edition of *Africa Report*.

MAURITANIA

Human Rights Developments

The human rights situation in Mauritania in 1991 was dominated by revelations that five to six hundred black political prisoners were executed or tortured to death by government forces between November 1990 and March 1991. The victims were among one to three thousand blacks who had been arrested during that period. In addition, security forces committed serious abuses against the black ethnic groups²⁴ along the Senegal River Valley, including murder, torture, rape, arbitrary arrest, and confiscation and destruction of property. In April, the Mauritanian government announced its intention to move toward democracy, but its commitment must be viewed in light of its continuing campaign to repress and brutalize Mauritania's black ethnic groups, notably the Halpulaars, who are considered most actively opposed to the government.

The wave of arrests of black Mauritians in late 1990 and early 1991 followed an alleged coup attempt by members of the black community backed, according to the authorities, by Senegal.²⁵

²⁴ The four black ethnic groups are the Halpulaar, Soninké, Wolof and Bambara. Although exact population figures are not known because the results of the most recent census, in 1988, were never published, these four groups are believed to make up about thirty percent of the population. Another thirty to forty percent are *Haratines*, also known as black Moors, the former black slaves of the politically dominant Arab-Berber *Beydanes* who continue to identify politically and culturally with their former masters. The remainder of the population is *Beydane*.

²⁵ Senegal denied participation in the coup attempt, and it is impossible to take the Mauritanian government's claim of a coup attempt seriously. First, the charges were announced only in December, even though the arrests began in mid-October. Second, the likelihood that black soldiers would attempt a coup must be considered small in light of the dramatic decrease in the number of black army officers and soldiers following an alleged coup attempt by black army officers in October 1987 as well as the expulsion of many black members of the army, the police force, the National Guard, various security services and the customs service in 1989 and 1990. Finally, and perhaps most important, the

Estimates of the number of blacks arrested range from one to three thousand, almost all Halpulaars from the military and civil service. Because the number of arrests exceeded the government's capacity to hold detainees in traditional detention centers, military bases and police stations in various parts of the country were turned into prisons. The detainees were held incommunicado, and most were savagely tortured, apparently in an effort to extract confessions and information about others. The torture included beatings, burns, electric shocks applied to the genitals, stripping prisoners naked and pouring cold water over them, burying prisoners in sand to their necks, and subjecting prisoners to "jaguar," a common method of torture in Mauritania involving tying a victim's hands and feet, suspending him upside down from a bar, and beating him, particularly on the soles of the feet.

In late March, the government declared an amnesty and freed hundreds of detainees. The released prisoners revealed the fate of those who had been murdered and tortured. Many who survived imprisonment are now reportedly crippled, paralyzed or maimed from the effects of torture, and some have died since their release. The government appointed a commission of inquiry in the spring, but it was composed entirely of military officers — even the pro-government Mauritanian League for Human Rights was not permitted to participate — and the commission's findings have not been made public. The possibility that a genuine effort will be made to expose the recent abuses — and thus deter their recurrence — appears dim.

In a rare show of public opposition, a series of open letters and tracts were issued in April criticizing the government's role in the arrests and killings. One petition signed by over seventy-five women — mothers, wives, sisters and nieces of some of those arrested and presumed dead — called on President Maaouya Ould Sid'Ahmed Taya to account for those killed. An open letter to President Taya signed by fifty prominent Mauriticians — including lawyers, doctors, professors and former ministers — denounced "the magnitude of the repression which was brought down upon the blacks, civilians and military, in the last months of 1990." The Mauritanian Workers Union published a statement calling

arrests took place in the midst of a municipal electoral campaign, at a time when the authorities were clearly nervous that one of the candidates for mayor of Nouakchott, the capital, was galvanizing the black and *Haratine* populations against the ruling *Brydanes*.

for an independent investigation and a national conference.

Although the number of deportations of blacks has dropped considerably since the second half of 1990, black villagers and herders continue to flee Mauritania for refuge in Senegal or Mali. The military and militia stationed in the Senegal River Valley as a virtual occupation force continue to be responsible for a pattern of indiscriminate killing, torture, rape and beating. The militia are composed predominantly of *Haratine* (or black Moors), former black slaves who continue to identify politically and culturally with their past masters. They act with impunity, arresting arbitrarily and sometimes killing villagers, and taking their food, their livestock, their belongings and even their wives and daughters. In an open letter to the president in September, nine villagers in the Brackna region detailed the killing of a thirty-four-year old man from the village of Dar-el-Barka by a member of the National Guard and spoke of other officially sanctioned atrocities.

Meanwhile, blacks in the cities continue to suffer government repression. Beginning in late 1990 and continuing throughout 1991, hundreds of black professionals were dismissed from their jobs, former prisoners were kept under close surveillance, and a sense of fear and insecurity was pervasive in the black community. Because of the government's policy of "Arabization," blacks continue to face discrimination in education, employment, access to loans and credits, the administration of justice (in both regular and religious courts) and language, with Arabic replacing French as the official language.

Ironically, news of the deaths in detention came at a time when the Mauritanian government had announced a series of reforms. On April 16, President Taya stated that an Economic and Social Council would be appointed, a referendum on a new constitution would be held, and parliamentary elections would be scheduled. The constitutional referendum took place on July 12. According to the government, the text was approved by 97.24 percent of the population. However, black opposition activists, including those associated with the African Liberation Forces of Mauritania, had called for a boycott of the referendum, and they assert that the referendum was passed by a substantially smaller margin.

In July, new laws were promulgated on political parties and the press, although these institutions remain subject to severe restrictions. The law on political parties, for example, states that no party can engage in propaganda "in contradiction with the principles of true Islam." By December, at least eleven political parties had registered, but virtually all

have close links to the ruling authorities. One, the Social Democratic Republican Party (SDRP), was formed at the end of August by President Taya. Another, the Assembly for Democracy and National Unity, was formed in August by Ahmed Ould Sidi Baba, the mayor of Atar and a relative of Taya.²⁶ The only genuine opposition parties are reportedly the Union of Democratic Forces, which includes *Beydanes*, *Haratines* and representatives of black ethnic groups, and as of late November, the Party for Freedom, Equality and Justice, which is largely black.

Despite the announced reforms, the government has not permitted greater freedom of expression. On several occasions, peaceful demonstrators calling for an independent inquiry into the deaths in detention were violently dispersed by the police. Some of these demonstrations were staged by women related to those who had died in detention; many of the demonstrators were injured by the police. In addition, the September issue of the journal *Mauritanie Demain* was banned for an article reporting that black detainees had been tortured to death.

In view of the president's candidacy, the opposition has asked for an interim government so that no party will have an advantage. Their request has gone unanswered. In the meantime, the government continues to use state-owned vehicles and funds for the president's party. The government has threatened civil servants with unemployment or demotion if they do not pledge their allegiance to the SDRP. Some former political detainees, fearing for their safety and jobs, have apparently felt obliged to join the government party. The government also solicits "donations" from businessmen in the form of money, cars and buildings.

Meanwhile, relations between the governments of Mauritania and Senegal, which were severed after a series of mass deportations in

²⁶ Some of the other political parties are: The New Mauritanian Party, headed by Moulaye Zeyd, the former mayor of Zourate; the People's Social and Democratic Union, headed by Mohammed Mahmoud Ould Mah, the former mayor of Nouakchott; and the Party for Democratic Justice, headed by Mohammed Abdoullahi Ould El Bane, a *Beydane* professor.

1989,²⁷ have begun to normalize. The governments have held a series of meetings on security issues and the restoration of diplomatic relations, and the two presidents met in November during the Francophone summit in Paris. Commissions have also been created to discuss a simmering border dispute, the return of property confiscated during the related expulsions of April and May 1989, and indemnity for property that was destroyed. These issues affect Mauritians who were forced to leave Senegal as well as black Mauritians and Senegalese who were expelled from Mauritania.

However, the intergovernmental discussions have not addressed the return of the thousands of black Mauritanian refugees in Senegal. In 1991, official estimates put the number of Mauritanian refugees in Senegal at approximately 53,000; in Mali, they number about seven to eight thousand. The real figures are probably substantially higher, since these numbers reflect only those who have registered with the local authorities, and does not include many of the thousands who are simply living with relatives. The longer the refugees stay and compete for scarce resources, the greater the tensions with the local population.

The continuing difficulties faced by the refugees and the preconditions for their return to Mauritania are usually overlooked by the international community in the interests of promoting peace between Senegal and Mauritania. However, human rights concerns must be an important component of any eventual peace agreement, and the legitimate rights of the refugees must be addressed in that context. Many observers are concerned that the normalization of relations between the two countries will occur at the expense of the refugees. But unless there is an end to human rights abuses against the black community in Mauritania, refugees will continue to flee to neighboring countries. The refugees have made it clear that they cannot return to Mauritania until their security is assured, their citizenship is restored, and their goods, homes and land are returned.

²⁷ A border dispute between Senegal and Mauritania in April 1989 led to mass expulsions of black Mauritians to Senegal and Mauritians back from Senegal. Taking advantage of an agreement between the two countries to repatriate each other's citizens, the Mauritanian authorities launched a campaign to deport thousands of blacks, especially those in the south near the economically important Senegal River Valley.

The Right to Monitor

The only human rights organization that exists in Mauritania is the pro-government Mauritanian League for Human Rights, which rarely criticizes the government. For example, the League made no known public protest about the arrest and killing of black alleged coup plotters. The inability of independent human rights groups to function in Mauritania is an important measure of the level of governmental repression. Until the spring of 1991, political parties and opposition groups of any kind were prohibited.

Since September 1989, and most recently in June 1991, Africa Watch has requested permission from the government to send a human rights fact-finding mission to Mauritania. The Mauritanian authorities did not respond to these requests until late November 1991. In December 1991, the government finally gave Africa Watch permission to send a mission in early 1992. Africa Watch is currently working out the details of such a mission with the government to ensure that delegates would be given access throughout the country, interviews in prisons would be confidential, and Mauritians who spoke with the Africa Watch team would not face reprisals. Africa Watch is unaware of any other human rights groups that was allowed to visit Mauritania during 1991.

U.S. Policy

In 1991, the U.S. government signaled its displeasure with the Mauritanian authorities by ending bilateral assistance and authorizing the U.S. ambassador to make private demarches about human rights concerns.

In February, as information began to surface about the deaths of hundreds of black political prisoners, the United States suspended the last of its bilateral aid to Mauritania — \$125,000 for International Military and Education Training. State Department sources reported to Africa Watch that the U.S. Embassy had told the Mauritanian government that the aid was cut because of human rights violations, including the deaths in detention, but no public confirmation of this reason was ever issued.

The Bush Administration did issue a strong public condemnation of Mauritanian abuses during hearings on the Maghreb held on June 19 before the House Subcommittees on African Affairs and on Human Rights and International Organizations. Testifying for the Administration,

James Bishop, senior deputy assistant secretary of state for human rights and humanitarian affairs, condemned "repeated human rights abuses consisting primarily of discrimination by the Maur-dominated government against non-Maur ethnic groups." He described the detention and brutal treatment of the alleged coup plotters, and the murder of five to six hundred of them. He also welcomed the Mauritanian government's pledge to democratize, but noted a number of government actions which contradicted that pledge, such as the beating of peaceful demonstrators and the arrest of democracy activists.

The State Department's *Country Reports on Human Rights Practices for 1990*, published in February 1991, contained an informative and well documented chapter on human rights abuses in Mauritania. The detail of the reporting indicates that the U.S. Embassy gathers extensive information about human rights violations throughout the country.

A "Sense of Congress" resolution passed the House Foreign Affairs Committee in May and the full Congress in July. The resolution condemned human rights abuses against black ethnic groups in Mauritania and called on the Mauritanian government to appoint an independent commission to investigate the deaths in detention. However, the Bush Administration refused to endorse the resolution, missing an opportunity to maintain public pressure on the Mauritanian government to end massive abuses.

In May, Africa Watch petitioned U.S. Trade Representative (USTR) Carla Hills requesting a review of labor rights in Mauritania because of the nation's use of slave labor. Under U.S. law, Mauritania stands to lose trade benefits under the Generalized System of Preferences (GSP) if a pattern of labor rights violations is found. The Trade Representative accepted the Africa Watch petition on August 21 and is currently considering the matter. A decision about whether Mauritania's GSP benefits should be terminated is expected in May 1992.

French Policy

France, as the former colonial power and one of Mauritania's principal sources of foreign aid, has more influence in Mauritania than any other Western country. French bilateral aid to Mauritania in

1990²⁸ was approximately three hundred million francs (roughly fifty-two million dollars), which included food aid and some 250 technical advisors in the fields of agriculture, health and education. France also provides a smaller amount of technical military cooperation to Mauritania. The prominence of the French role in Mauritania has been particularly enhanced since the Gulf War, because financial assistance from the Gulf states, notably Kuwait, dried up after Mauritania supported Iraq.

The releases of political prisoners in March and the announcement of reforms in April appears to have been due in large part to French pressure. The March amnesty was declared just after a trip to Nouakchott by Michel Vauzelle, president of the Foreign Affairs Committee of the French National Assembly. President Taya's April speech on democratization was made several days after Roland Dumas, the French foreign minister, visited Mauritania. Dumas's visit also prompted the Mauritanian government's promise of parliamentary elections and its appointment of a commission of inquiry into the recent prison deaths. The French, however, made no public statements during these visits.

The Work of Africa Watch

Africa Watch's work on Mauritania continues to focus on abuses against black ethnic groups. In February and March, Africa Watch sent a mission to Senegal to gather information on the persecution of blacks in Mauritania. Africa Watch visited Dakar and the Senegal River Valley, which borders Mauritania and houses most Mauritanian refugees in Senegal. The 1991 investigation was a follow-up to a prior mission to Senegal in May and June 1990. The information collected will be compiled in a major report on the persecution of black ethnic groups to be published in early 1992.

During 1991, Africa Watch tried to focus attention of donor governments and agencies on human rights abuses in Mauritania. We urged the United States, France and the European Community to pressure the Mauritanian government on human rights grounds. In May, Africa Watch published a newsletter, "More Than 200 Black Political Detainees Executed or Tortured to Death," describing the arrests and

²⁸ Figures not available for 1991.

conditions of detention. The document included a preliminary list of 173 blacks who died in detention.

In June, Africa Watch and Middle East Watch testified before the House Subcommittees on African Affairs and on Human Rights and International Organizations about human rights in the Maghreb. Much of the testimony focused on gross violations of human rights in Mauritania, describing the recent history of persecution against black ethnic groups including the deaths in detention, slavery, and the use of "Arabization" to marginalize black communities.

Africa Watch also worked to promote the "Sense of Congress" resolution noted above, and filed the above-mentioned petition with USTR Hills challenging labor rights practices in Mauritania.

Africa Watch published articles on human rights in Mauritania in the April 1-7 edition of *West Africa*, the May issue of *Africa Events*, the July 8 issue of *The Nation*, the July 8-14 edition of *West Africa*, and the July-August issue of *Africa Report*.

NIGERIA

Human Rights Developments

Throughout its six-year tenure, the military government of General Ibrahim Babangida has relied on force to ensure its stay in power. In the process, the Babangida government has been responsible for the deaths of hundreds of students and others who demonstrated against its policies, the detention without trial of thousands of government critics, the silencing of opposition organizations and the erosion of the rule of law. In 1991, the continuation of those practices furthered the deterioration of an already crumbling civil society.

Babangida's tightly controlled program of transition to civilian rule, due to be completed by October 1, 1992, purports to be building a democracy. But the program has included a prohibition on all independent political parties and the denial of the right to vote to many other Nigerians. The government claimed that such controls were necessary to eliminate the ethnic, religious and regional violence that has plagued the country in the past. During 1991, however, escalating

political violence and several outbreaks of religious riots in the north indicated that the old problems remain unsolved.

In December, thirteen former governors, senators and ministers were arrested for violating the ban on participation in politics by former politicians. They were accused of sponsoring candidates for state governorship elections and were ordered by the Transition to Civilian Rule Tribunal to remain in police custody until they reappear before the tribunal on January 16, 1992. However, the ban was lifted on December 18 with a government announcement that "the time has come when the old and new should mix, cooperate or compete."

Although President Babangida repeatedly has declared his intention to complete the transition program on schedule, the growing violence has provoked official warnings that the transition is in danger of being derailed, and has encouraged speculation that the government might use the instability as an excuse to remain in power. Even if the military leaves office as planned, its success in manipulating the political system, weakening the courts and destroying such civilian institutions as the labor movement and student unions has ensured that the fragile new government will be vulnerable to future military influence. With less than a year to go, the government continues to rely on strong-arm tactics, and has refused to loosen its grip on civilian institutions.

Elections in 1990 had been conducted using an experimental method known as the "open ballot," in which voters line up behind photographs of their chosen candidates, rather than the secret ballot, as provided by Nigerian law. The possibilities for voter intimidation inherent in the open ballot system were obvious. In March 1991, the government announced that it would conduct an extensive nationwide opinion poll to canvas the views of Nigerians on the new voting system. Shortly thereafter, the government declared that, based on what was said to be the results of the poll, the open ballot would be used in all future elections.

The government continued its practice of ruling by military decrees, which are prohibited from being questioned by the courts. State Security (Detention of Persons) Decree 2 of 1984, the most widely abused and feared decree, provides for virtually unlimited detention without trial. In 1991, the government used Decree 2 to continue to hold relatives and acquaintances of suspected participants in the April 1990 coup attempt who are still at large. Those who remain in detention include Gloria Mowarin, the girlfriend of a suspected coup financier, whose release was ordered by the court on February 19. Pregnant at the time of her detention, she miscarried in her seventh month. Others include Gloria

Awhirin and Rhoda Ackah, two sisters of Great Ogboru, the alleged coup leader. In June 1991, a High Court judge appealed to the federal government to order their immediate release on humanitarian grounds. One is nursing a baby. Dorah Mukoro, wife of Major Saliba Mukoro, an alleged coup participant, reportedly escaped from detention in September, along with her children. She gave birth in detention less than two months after her arrest.

As in past years, the government in 1991 was extremely sensitive to allegations of official corruption, which is widely recognized as one of Nigeria's most intractable problems. In the most talked-about case of the year, Jennifer Madike was arrested on January 10 for allegedly collecting a bribe from three men on the pretext that she was to deliver it to Fidelis Oyakhilome, then chair of the Nigerian Drug Law Enforcement Agency, to secure the release of two detained suspected drug dealers. She was later detained under Decree 2, amid rumors of the involvement of First Lady Maryam Babangida in the scandal. She was not produced in court until March 22, after numerous complaints filed by her lawyer, human rights activist Femi Falana, who is also president of the National Association of Democratic Lawyers and vice president of the Committee for the Defense of Human Rights. Madike was later charged with stealing and official corruption. Her cousin was arrested on April 17, and both women were subsequently charged with forgery in connection with a letter that the two claim was written to Madike by Mrs. Babangida. Madike became seriously ill in custody and is still denied access to her lawyer, despite several court orders.

One of the most damaging effects of military rule on the justice system has been the use of special tribunals. Lacking internationally recognized judicial safeguards, they hear a variety of cases considered by the government to be particularly sensitive, including cases of armed robbery, treason, corruption, drug trafficking and subverting the transition to civilian rule. Those convicted in some cases have no right of appeal. Others may be appealed to a Special Appeal Tribunal, but the appellate decisions must then be confirmed by the government. Until 1991, military officers sat on tribunals along with judges, but according to Decree 9 of 1991, tribunals now consist of one civilian judge. While a small improvement, this change does not address many of the fundamental problems of the tribunals, including a presumption of guilt, inadequate legal representation, disproportionately stiff sentences and strictly circumscribed provisions for appeal. In addition, the continued existence of a parallel court system weakens the authority of the regular

courts.

Despite the removal of members of the military from the special tribunals, military tribunals are still used to try certain cases. Nine soldiers and two civilians, accused of involvement in the April 1990 coup attempt, were tried in secret before a military tribunal in September and October. According to the Civil Liberties Organization (CLO), a Nigerian human rights group, the suspects had been acquitted on similar charges in two previous trials before military tribunals and had been in detention for at least one year.²⁹ They were denied counsel during their detention and were represented at the trial by army lawyers. The CLO filed a suit to restrain the trial and later learned that it had been concluded and that eight suspects had been sentenced to death and three to life imprisonment. Two weeks later, the government announced that, pursuant to its human rights policy, the death sentences were commuted to life imprisonment and the life sentences to ten years' imprisonment.

Corruption in the judiciary has worsened under the Babangida government which, at the highest levels, has shown a lack of respect for the courts. A government-sponsored candidate who headed the Nigerian Bar Association (NBA) from 1989 to 1991 assured a policy of nonconfrontation with the government. In March 1991, at the opening ceremony of the African Bar Association meeting in Abuja, the government announced a one million dollar "gift" to the NBA, much to the embarrassment of many Nigerian lawyers. On August 7, Attorney General and Minister of Justice Prince Bola Ajibola announced a plan to require licenses for all lawyers; many feared the plan would be used to exert greater control over the bar.

The last two military governments' hostility to academic pursuits has crippled universities throughout the country. In 1991, students were the targets of a renewed siege. The crackdown began in late May in response to an ultimatum issued by the banned student organization, the National Association of Nigerian Students. The ultimatum included demands for the reinstatement of suspended students, the unbanning of student unions on several campuses, and the undertaking of reforms in university administration. A number of students were arrested in the days before the ultimatum deadline, and protests occurred on campuses throughout the country on the day of the deadline. Two students in Lagos were killed

²⁹ Sixty-nine coup suspects were executed in 1990 after appearing before military tribunals that lacked basic judicial safeguards.

during a campus clash between armed security agents and unarmed students. A government panel that was appointed to probe the riot, headed by the chair of the college's governing council, echoed police claims that the use of lethal force had been justified.

In June, the police admitted holding two hundred students. Many have since been released, but others have been arrested. Seven student leaders who were arrested in late May and early June were detained under Decree 2; they were held in harsh conditions in two Lagos prisons until their release on August 21. Several of them were tortured. The students went on hunger strike and were not given medical attention despite serious medical complications. Upon their release, the students were forced to sign an "Undertaking to be of Good Conduct," which forbids them from commenting on their detention, suing the government for the detention, and participating in student protests.

The government has filed trumped-up criminal charges against a number of student activists for their role in demonstrations, including four at Obafemi Awolowo University (OAU) who appear to have been falsely accused of a murder. Students who were present when the murder at OAU occurred reported that the victim was killed by a mob and that the arrested students were not in the area at the time. Many others have been expelled from university.

In response to the unrest, the Education Minister has threatened to require every student-union leader to undergo special training. He stated that the "leadership" program would "promote development-oriented student unionism as against the preaching and practicing of non-conformism."

Police brutality, a major issue in the country, has not been seriously addressed by the government, although it was an important focus of domestic human rights groups in 1991 and was a major point of criticism of the government's response to religious riots that broke out in the north on several occasions throughout the year. Security agents were widely accused of not acting quickly enough to contain the violence and of using excessive force once violence erupted. The inspector general of police warned that the police would "deal with" anyone who spread rumors about persistent unrest in Bauchi. In mid-October, General Babangida cut short his visit to the Commonwealth Heads of Government Conference in Zimbabwe when violence broke out in Kano. Hundreds were killed in several days of violence following the announcement of an open-air Christian revival. According to Christian refugees, security forces did not act decisively at the outset because of fears of provoking the

Islamic leadership in the area. When violence escalated, the police fired indiscriminately at crowds, using live ammunition.

The Nigerian press, which for years was regarded as the most vibrant in Africa, has been increasingly under attack over the last few years. In 1991, the government continued its policy of closing down newspapers and arresting journalists who reported on such sensitive topics as corruption and student demonstrations. Government attacks on the press included:

- o Three newspapers in Lagos owned by John West Publications were shut down in March for thirteen days for what was described as "embarrassing publications" against the president and his wife, relating to the Jennifer Madike case described above. Under the heading "IBB, Maryam [Babangida] named in Jennifer's deal," the offending story, which appeared in the *Lagos Evening News*, reported the contents of a letter purportedly written by the chair of the Drug Law Enforcement Agency in which he justified the need to detain Madike under Decree 2. The paper's editor and news editor were arrested and detained for a few days.
- o On May 29, the Lagos State government temporarily closed down the *Guardian*, a daily, after its coverage of the student killings in Lagos described above. Four journalists and two office assistants were arrested. The paper reopened nearly two weeks later. The journalists and assistants were released the next day without charge.
- o William Keeling, a correspondent for the British daily *Financial Times*, was expelled from Nigeria and declared persona non grata. The government accused him of writing inaccurate articles "ostensibly to cause mischief and disharmony among Nigerians and between Nigeria and the rest of the world." The government's statement cited an article in which Keeling had accused the government of not reporting about half of the extra five billion dollars that it was estimated to have earned from higher oil prices during the Gulf war.

The Right to Monitor

Nigeria has a young and vital human rights movement. Three of the most active human rights groups are the CLO, the Committee for the Defense of Human Rights (CDHR), and a new group, the Constitutional Rights Project (CRP). Other groups — including the National Association of Democratic Lawyers (NADL), the Academic Staff Union of Universities, and the National Association of Nigerian Students — and independent lawyers, including Gani Fawehinmi and Alao Aka-Bashorun, also have involved themselves in human rights issues. Although the government permits groups to operate and individuals to speak out, it does not hesitate to harass them periodically, as occurred regularly in 1991.

Femi Falana was harassed on numerous occasions, apparently because of his role as defense counsel for Jennifer Madike, whose case is described above. He was arrested on May 12, when security agents asked to see documents used in the defense of his client, and again on May 31, when he was accused of assisting student leaders in Nigeria at a time when he had been in the United States. In July, security officials threatened him with further action if he persisted with the Madike case. His passport was seized in October, when he was at the airport trying to leave the country to attend a meeting of nongovernmental human rights organizations from the Commonwealth countries. The meeting had been called to lobby the 1991 Commonwealth Heads of Government Conference, which was being held in Zimbabwe. He was questioned over the next two days about the Madike case and accused of being insufficiently patriotic because of his opposition to the government-sponsored candidacies of Nigerians to fill prestigious positions in the international arena.³⁰

³⁰ Nigerian human rights groups were actively opposed to the candidacies of General Obasanjo for U.N. secretary general and Prince Bola Ajibola for judge of the International Court of Justice. The CDHR and NADL jointly published a paper explaining their opposition to the candidacy of General Obasanjo, Nigeria's military ruler from 1976 to 1979. They accused Obasanjo of detaining government critics without trial, establishing a ruthless security organization, violently suppressing protest and initiating other forms of repression. The CLO, CDHR and NADL have all protested the nomination of Prince Bola Ajibola because of his activities as attorney general and minister of justice in the Babangida government, including his role in subverting the rule of law by

The executive director of the Committee for the Defense of Human Rights, Clement Nwankwo, and the chairman of the CRPs's Lawyers Committee, Tayo Oyetibo, were questioned over a period of two days by officers of the Directorate of Military Intelligence about their defense of Dorah Mukoro, whose case is mentioned above, and the CRP's criticism of such government practices as rule by decree and the use of special tribunals. The CRP reported that the officers became angry when they refused to answer most of the questions.

At a weekly press briefing in early October, Nigerian Vice President Aikhomu spoke out against human rights groups and the rights they seek to uphold.

It is easy for them to point accusing fingers on people, but have we ever asked in this country how these so called self-styled humanist organizations are funded? Who are their backers; their particular interest in our society? Today, we are fighting people responsible for illicit dealing in drugs, rapists, people who want to turn the society into a jungle, but the so-called human rights organizations in this country have interest to defend the rights of these enemies of society more than anything else.

A few weeks later, after the CLO publicized the secret trial of coup suspects, the government made a public statement to the effect that something must be done to stop the CLO.

In November, the passport of human rights attorney Gani Fawehinmi was seized when he was on his way to London for medical treatment. No official reason was given for the action. Human rights attorney Alao Aka-Bashorun's passport, which was seized in 1990, has not yet been returned.

U.S. Policy

A speech by Vice President Quayle in Abuja on September 6 raised a number of human rights issues of particular significance to Nigeria and was an obvious message of caution to its leaders. Speaking before a meeting of Nigerian attorneys general, Quayle emphasized U.S. support

detaining political activists without trial and disobeying court orders.

for democracies and democratic values. Appropriately for the Nigerian situation, he listed "the basic principles of democracy: freedom of speech; freedom of the press; freedom of assembly; freedom from arbitrary intimidation and arrest; and, the rule of law which is the life-blood of democracy." Noting that "[d]emocracies must be governed by laws, not men," he detailed the importance of an independent judiciary and press in establishing democracy. In specifying the rights of the accused, he said: "They must be charged expeditiously; they must be free from physical abuse; the conditions of their imprisonment must meet minimum standards; and, they should be tried quickly and fairly." Quayle also appropriately drew attention to Nigeria's abysmal prison conditions.

In addition, Vice President Quayle raised human rights issues in his private meetings with General Babangida. Without providing details about these meetings, State Department officials indicated that some of the issues discussed were provisions for elections, including the open ballot and the ban on former politicians.

Quayle's speech was in marked contrast to typical U.S. human rights policy on Nigeria, which usually relies on "quiet diplomacy." Although U.S. Embassy officials in Lagos are in regular contact with local human rights groups and invite them to Embassy functions, the Embassy does not usually issue public statements on human rights issues. Nigerian human rights groups and others note that more public statements, along the lines of Quayle's speech, would go a long way toward pressing the government, which relies on its generally positive image in the West, to halt abuses.

On several occasions throughout the year, Africa Watch wrote to State Department officials about Nigeria. In response to one letter, Assistant Secretary of State for African Affairs Herman Cohen stated that the United States has expressed concern to the Nigerian government over "restrictions on freedom of the press, alleged police brutality, unjustified detentions, and very poor prison conditions." However, by citing relatively minor reform measures, such as the formation of special police units to investigate misconduct, as a solution for such monumental problems as violent police abuse, State Department officials displayed an unfortunate willingness to accept the government's attempts at largely cosmetic change rather than demanding serious solutions.

The chapter on Nigeria in the State Department's *Country Reports on Human Rights Practices in 1990*, published in February 1991, discussed many of the country's serious human rights issues, including the crackdown after the coup and the appalling prison conditions. However,

it did not impart an accurate overall impression of the seriousness of human rights abuses and stopped short of holding top government officials responsible for such severe violations as police abuse. It also understated a number of problems, such as restrictions on academic freedom, and it gave a misleading report on the rights of workers, neglecting to state plainly that the government dissolved the national labor association, the Nigerian Labor Congress, in 1988.

The United States provided no direct military assistance to Nigeria in 1991. Fifty thousand dollars were provided for military training. Development aid for specified projects, mainly related to health, totaled eleven million dollars in fiscal year 1991. The Administration requested six million dollars in unspecified aid projects, but according to a State Department source, only two million dollars were spent. While in Nigeria, Vice President Quayle announced that this two million dollars would be used to support the transition program. Appropriately, the aid will not go to the Nigerian government, but will be channeled through programs sponsored by the U.S. Agency for International Development (USAID) to establish links between U.S. and Nigerian nongovernmental organizations. The aid will be used for programs involving human rights, legal issues, women's political groups, voter education, local government improvement, reporting on political and economic issues, and professional economic associations. A State Department source told Africa Watch that the Administration has requested one million dollars in unspecified aid for fiscal year 1992, to augment the previous year's program of support to the transition program. In addition, USAID has provided small grants for human rights concerns, including one for \$16,500 for workshops to be held at the Nigerian Institute for Advanced Legal Studies to educate high court judges and government officials on issues related to human rights and the rule of law.

The Work of Africa Watch

In 1991, Africa Watch intensified its work on Nigeria, begun the year before. A mission went to Lagos for a week in late February and met with human rights groups, lawyers who are independently involved in human rights work, journalists, foundation representatives, academics, students and U.S. Embassy officials. Africa Watch collected information on the military's interference in Nigeria's judiciary and civil institutions during the transition program. In March, an Africa Watch representative

followed up this trip by attending a meeting of the African Commission of Human Rights in Lagos, and took advantage of the occasion to meet members of human rights organizations, journalists and lawyers.

In April, Africa Watch published a newsletter, "*Behind the Wall — The Civil Liberties Organization Releases a Damning Report on Prison Conditions Nationwide.*" The newsletter summarized the CLO report, and discussed such pervasive problems as the high mortality rate; torture and ill-treatment; overcrowding; insufficient food, medical care, clothing and sanitation; and lack of redress for prisoners' grievances.

The Africa Watch report, *Academic Freedom and Human Rights Abuses in Africa*, published in April, contained a chapter on the abuses suffered by students and academics under the Babangida government.

Articles by the Africa Watch staff on police brutality, military intervention in civil society, and press restrictions were published in the *Atlanta Constitution*, *Africa Events* and *The Nairobi Law Monthly*.

Africa Watch wrote to the Nigerian government throughout the year, including lengthy letters sent to President Babangida in June and July regarding the crackdown on students and related issues.

In October, Africa Watch published a fifty-five-page report, *Nigeria: On the Eve of "Change"; A Transition to What?* The report discussed Africa Watch's concerns regarding the transition process, specifically the tightly controlled transition program, the lack of respect for the rule of law, and the government's interference with civilian institutions.

RWANDA

Human Rights Developments

An ongoing war in Rwanda that claimed thousands of civilian lives overshadowed human rights developments in 1991. Thousands of alleged rebel sympathizers primarily belonging to the minority Tutsi ethnic group were arbitrarily detained under harsh conditions, and twenty were convicted in trials that did not meet international standards. Throughout 1991, military and local authorities used the war as a pretext to beat, terrorize and kill Tutsi and other perceived civilian opponents.

Despite a March 29, 1991 cease-fire agreement and several regional summits with the presidents of neighboring Uganda, Tanzania, Burundi and Zaire to resolve the conflict, the war continued in northern Rwanda. Each side has accused the other of killing civilians and violating the cease-fire agreement. During the year, the government announced a process of democratization, although it did not show itself to be entirely committed to the process, especially in its attacks against the press.

The war began in October 1990 when several thousand members of the Rwandan Patriotic Front (RPF) invaded northern Rwanda from southern Uganda.³¹ The RPF presents itself as a national organization, claiming that its membership, almost exclusively from the Tutsi ethnic group, is a result of historical circumstance. Tutsi, who now comprise roughly fourteen percent of the Rwandan population, ruled Rwanda as a monarchy until 1959 when power was seized by members of the Hutu ethnic group, who now comprise roughly eighty-five percent of the Rwandan population.

According to the RPF, it invaded Rwanda for three reasons: to overthrow the government and institute democracy; to eliminate corruption, political persecution, and discrimination; and to solve the refugee problem. The issue of refugees is central to an understanding of the invasion, since many of the 400,000 to 700,000 Tutsi exiles have a long-standing desire to return to their country. These Tutsi, who live primarily in neighboring Zaire, Burundi, Uganda and Tanzania, were forced to flee Rwanda following outbreaks of interethnic violence between 1959 and 1966 and, most recently, in 1973. Tens of thousands of Tutsi were massacred and several hundred thousand more were forced into exile. Originally, the eighteen-year-old Hutu government of President Juvénal Habyarimana argued that the country's limited resources prevented it from accommodating the desire of these Tutsi to return.³² President Habyarimana has since changed his position and

³¹ The invaders belonged to the Rwandan Patriotic Army, the military arm of the RPF. Although estimates vary, the initial invading force included roughly seven thousand insurgents; it now numbers roughly ten thousand. Over half of the soldiers were deserters from Uganda's National Resistance Army.

³² With a population of roughly seven million in an area about 10,000 square miles, or slightly over 26,000 square kilometers, Rwanda is one of the most densely populated countries in the world -- roughly 690 persons per square mile.

said that refugees are welcome to come back. Although the government is supposedly in the process of searching for resettlement sites, no significant number of refugees has returned.

Between January and March 1991, over three hundred civilians of a Tutsi subgroup known as the Bagogwe people were massacred in the northwestern region of Rwanda, following a major RPF offensive in the area at the end of January.³³ During the offensive the rebels held an important town for a day, opened the local prison, and released hundreds of prisoners. This brief RPF success became the pretext for Rwandan police, military and civilian officials, along with ordinary civilians, to commit the massacre. When the RPF withdrew from the town, some of the freed prisoners followed them, but others simply returned to their homes, only to be re-arrested or killed by the authorities.

While the massacre was widely discussed among Tutsi in Kigali, the capital, there was no press coverage of the incident until June 20, when the Belgian newspaper *L'Instant* broke the story. The Rwandan government did not acknowledge that any killings had occurred until August 14, the day after the RPF held a news conference denouncing the killings; the Rwandan ambassador to Belgium then reportedly admitted that "a massacre of Tutsi civilians had occurred in the region." He did not specify the number of casualties and blamed the RPF for the killings. He also indicated that the government had commenced an investigation into the matter and that those responsible would be prosecuted, although no prosecutions have since occurred. Those Bagogwe who survived the massacre still fear for their lives and some have fled to other parts of the country.

On two separate occasions in October, local authorities in Kanzenze, a region not far from Kigali, picked up at least a dozen Tutsi men whom they suspected of recruiting others to join the RPF. At least two of these men were severely beaten before being released without charge, and at least eight others have since disappeared.³⁴

It also has one of the world's highest population growth rates and is unable to produce enough food to feed adequately over two million of its citizens.

³³ Estimates range from 300 to 1,200.

³⁴ The number of disappeared may be as high as eleven.

In November, roughly five hundred civilians, primarily Tutsi, were forced to flee a region in eastern Rwanda following a series of savage attacks in which a local civilian official participated. During the course of the attacks, an elderly Tutsi woman was killed, three young Tutsi girls were gang raped, an eight-month-pregnant Tutsi woman was severely injured, several other Tutsi men were injured with machetes and badly beaten, and several homes were destroyed or pillaged. At least one Hutu man who had attempted to help a Tutsi neighbor during the attacks was beaten the following day by military authorities. In a separate incident in mid-October, a civilian official in this same area ordered the communal police to pick up sixteen men who have not been seen since.

In September, in another region in the east, local military authorities reportedly picked up several persons, both Hutu and Tutsi, many of whom lacked identity papers and at least some of whom have since disappeared. In a separate incident in this same area on November 13, soldiers killed the president of a fishing cooperative.

Immediately following the 1990 invasion, civilian and military authorities began to arrest arbitrarily and detain without charge or trial several thousand citizens whom it suspected of collaborating or sympathizing with the RPF. Thousands of those arrested remained in detention until April 1991. Many of the arrests occurred in and around Kigali. Although the government denies that the massive arrests were based on ethnicity, roughly seventy-five percent of those arrested were Tutsi, particularly Tutsi priests, intellectuals, businessmen, and other prominent Tutsi whom the government suspected of providing financial support to the rebels. Many Tutsi were arrested because of family relations with individual rebels.

The government arrested several hundred Ugandans on the basis of their nationality, undoubtedly due to a drastic deterioration in relations between Rwanda and Uganda after the war began. The Rwandan government maintains that Uganda is providing military assistance to the rebels.

Many of those arrested and detained were tortured or severely beaten and were not provided adequate food, water, medical care or toilet facilities. Civilian authorities confiscated and encouraged crowds to confiscate personal belongings from many homes.

According to the government, over 2,500 persons had been arrested within two weeks of the invasion. By mid-November 1990, the International Committee of the Red Cross (ICRC) had registered over 4,500 detainees in twenty-five places of detention. By mid-April 1991, the

government acknowledged that it had arrested 8,047 persons since the invasion and that forty-eight remained in detention.³⁵ Roughly three thousand were released without charge between October 1990 and February 1991. Most of the remaining detainees were released without charge between late March and early April 1991. Although no charges are outstanding against any of the former detainees, dozens have been fired from their jobs. Among government employees who lost their jobs are five persons who worked at the Commercial Bank of Rwanda and one person who worked at the Ministry of Agriculture.

In January 1991, thirteen peasants from the east were tried without counsel before the State Security Court. One was charged with "threatening state security" for allegedly having recruited people to join the RPF. The others were charged with having been recruited in the RPF and with having failed to inform the authorities of these recruitment efforts. One was sentenced to death, eleven received prison terms ranging from two-and-a-half to twenty years, and one was acquitted. In February, two other sets of defendants were tried: a group of eight, most of whom were intellectuals, were tried for "threatening state security," and a group of four, including a minor of ten years of age, was reportedly accused of having cassettes of RPF music. Several of these defendants complained that they had been beaten or forced to make confessions; two Rwandan lawyers representing some of the defendants were intimidated by threatening anonymous telephone calls and a hostile public into withdrawing before the end of the trial. Of those tried in February, seven were sentenced to death, one received a ten-year prison term, three were acquitted, and one remained in jail pending further investigation. According to a presidential pardon issued in April 1991, all of the death sentences were commuted to life imprisonment.

Not all human rights violations were directly war-related. In May 1991, several journalists signed a letter to the president protesting what they termed "the censorship orchestrated by certain authorities with regard to the independent press." Since the beginning of the year, the government has arrested at least ten journalists in connection with articles they had written and charged many of them with defamation, subversion or "threatening state security." Many of the offending articles relate to government corruption, including within the president's family. At least four journalists were detained in late November, one was badly

³⁵ The number arrested may have reached as high as ten thousand.

beaten, and several others are in hiding. Some also face civil defamation charges initiated by former or current government officials. In August, the government enacted a new press law that increases government control of the press.

Despite these attacks, the number of independent journals has increased greatly in the last year. There are now over fifty journals, compared to fewer than a dozen before the war. The proliferation is due to the government's decision in July 1990 to permit greater freedom of the press as part of a declared transition to a multiparty democracy. In July, an independent journalist's association was formed — the first of its kind in Rwanda. In addition to defending journalists from government attacks and promoting professional standards, the association has lobbied against the new press law.

Ostensibly at least, Rwanda is moving toward a multiparty democracy. The process was announced in July 1990, but the government noticeably accelerated the pace of reform after the war began. A new Constitution, a new law on political parties, and a new National Political Charter were all adopted in 1991 and are in effect. These documents guarantee freedom of expression (but not explicitly freedom of the press) and abolish the previous single-party system. To date, eight opposition political parties have registered and are formally recognized by the government.

Despite these developments, certain official actions raise doubts about the sincerity of the government's commitment to democracy. First, the government is increasingly harassing individuals who oppose the National Republican Movement for Democracy and Development (MRND), the reorganized former ruling party, by threatening them, disrupting their meetings and denying them documents needed to travel throughout the country.³⁶ Second, although officials claim to be impartial toward the newly formed parties, they are still members of the MRND and are pressuring others to become members. Third, although the new Constitution of June 1991 requires the president to appoint a prime minister, President Habyarimana waited until October 1991, and then made an appointment without consulting any of the new political parties. Finally, the president, who is a military officer, has joined the

³⁶ At an extraordinary congress at the end of April 1991, the party restructured itself and jettisoned its old name, the National Revolutionary Movement for Democracy.

reorganized MRND even though the new law on political parties prohibits military, police, and magistrates from belonging to political parties. Several of the newly formed political parties have demanded that the president either resign his military commission or abandon his membership in the MRND to comply with the constitutional requirement.

The Right to Monitor

On September 30, 1990, the Rwandan Association for the Defense of Human Rights (ARDHO) was formed. An apolitical organization that works on behalf of all Rwandans irrespective of ethnicity, ARDHO is actively investigating and documenting individual cases of human right abuse and intervening with Rwandan authorities. The cases pursued frequently involve illegal detentions and mistreatment of civilians by the military or police. It also has begun its own investigation into the massacre of the Bagogwe people. To date, it has not published any reports, but it has attempted to alert the public to its findings through radio broadcasts. The government denied ARDHO the right to broadcast its first declaration immediately after the outbreak of the war, but the organization has been able to broadcast all subsequent declarations without interference. In late November or early December, ARDHO filed a complaint against a civilian official in Kanzenze concerning the October disappearance of several persons and the beating of others. An official investigation into the case reportedly has begun.

In late 1991, five other human rights organizations were formed: the Association of Volunteers of Peace (AVP); the Rwandan Association for the Defense of Human Rights and Public Liberties (ADL); Kanyarwanda; the Christian League for the Defense of Human Rights in Rwanda; and Society and Perspective. One of these organizations, ADL, has a full-time staff member who has been actively taking testimony of people beaten by military and civilian authorities. At least three of these organizations, ADL, AVP and Kanyarwanda, are known to be compiling information about people who have been killed, disappeared or beaten and, in some cases, have intervened with authorities.

To date, none of the members of these six human rights organizations has been arrested. However, the president of ARDHO, who is also a prosecutor, was transferred to an inferior position. At least one of the members of another organization has been involved in a suspicious "automobile accident."

U.S. Policy

Because the United States has few economic or political interests in Rwanda,³⁷ Rwanda does not figure prominently in U.S. foreign policy. According to State Department officials, the Bush Administration has a generally positive view of the country's human rights record, regarding it as a politically "moderate" state that is less repressive than many other African countries. These officials indicate that the Administration sees Rwanda's human rights record as having improved in 1991 following a deterioration in 1990 immediately after the invasion, and supports the democratization process announced by the government. In 1991, the Administration had several opportunities to raise human rights concerns with the Rwandan government, but did not always do so.

According to the State Department, the Administration has privately encouraged Rwandan officials to increase respect for basic human rights and popular participation in the political process. State Department officials told Africa Watch that the U.S. ambassador to Rwanda, Robert Flaten, privately raised concerns about attacks against the press, particularly following the May arrest of four journalists. Assistant Secretary of State for African Affairs Herman Cohen and Deputy Assistant Secretary of State for Human Rights and Humanitarian Affairs James Bishop also were reported to have privately raised concerns about the detention of these journalists at two separate meetings with Rwandan Minister of Foreign Affairs and International Cooperation Casimir Bizimungu during his visit to Washington in June.

In March, Deputy Assistant Secretary of State for African Affairs Irvin Hicks met with President Habyarimana and other officials in Kigali. According to State Department officials, the secretary expressed U.S. appreciation for Rwanda's supportive position during the Persian Gulf conflict, encouraged democratization, and delivered a note from Secretary Cohen to similar effect. In Burundi in April 1991, Secretary Cohen met with U.S. ambassadors to Rwanda, Burundi, Zaire, Uganda, Tanzania and Kenya to discuss the Rwandan crisis; once again, democratization was

³⁷ There has been a large decline in the value of Rwandan exports to the United States, primarily coffee, because of the sharp decline in coffee prices. The only significant American investment in the country is a privately owned tea plantation.

discussed.

The State Department's *Country Reports on Human Rights Practices for 1990*, issued in February 1991, was the only written statement on human rights in Rwanda for the public record in 1991. The report rightly noted that human rights deteriorated in Rwanda in 1990 following the invasion in October. It accurately depicted some of the serious human rights violations committed in connection with the war, including torture, beating of detainees, and poor conditions of detention. However, the report did not discuss the widely reported incident of soldiers firing indiscriminately on rural civilians in up to ten pastoral settlements in early October 1990, in the Byumba prefecture, in northeast Rwanda.³⁸

For fiscal year 1991, the Administration requested for Rwanda \$9 million in development assistance, \$625,000 for the Peace Corps and approximately \$100,000 for the International Military Education and Training program. Training of Rwandan military personnel did not occur in 1990 due to the war in the north.

To date, it appears that Rwanda will receive \$15,768,000 in U.S. aid for fiscal year 1991 — over sixty percent more than was requested. The increase is largely due to congressional support for the Rwandan democratization process and thus the doubling of the grant for development assistance.³⁹ The Administration should use this grant to press for greater accountability on human rights issues, such as prosecution of those responsible for the massacre of over three hundred Bagogwe people.

In the first half of 1991,⁴⁰ three World Bank loans and one African Development Bank loan to Rwanda were formally considered. U.S. votes before multilateral lending institutions are governed by Section 701 of the International Financial Institutions Act of 1977, which prohibits U.S. support for loans to governments that engage in a systematic pattern of

³⁸ On October 11, 1990, State Department spokeswoman Margaret Tutwiler stated that the Department had been unable to verify reports of a massacre in the northeast.

³⁹ The projected aid figures for fiscal year 1991 are \$668,000 for Peace Corps activities and \$15,000 in development assistance. IMET remains unchanged from the amount requested by the Administration.

⁴⁰ Reports are available only for this time period.

gross violations of internationally recognized human rights, unless the loan addresses basic human needs. The bar should have applied in the case of Rwanda, following the atrocities committed in the course of the war in the north. Two of the World Bank loans appeared to address basic human needs and were thus justifiably supported by the United States. However, a third World Bank loan of \$90 million for a structural adjustment project, which the United States also supported, did not meet basic human needs and should have been opposed. Similarly, an \$11.16 million African Development Bank loan for a road project did not address basic human needs. The United States did not support the loan, but on economic rather than human rights grounds, missing an important opportunity to use its vote to advance respect for human rights.

The Work of Africa Watch

Africa Watch began to monitor Rwanda in mid-1991. Several letters were written to President Habyarimana protesting the government's attacks on the press. An article was published in the July 1991 issue of *The Nairobi Law Monthly* which highlighted the plight of the independent press. In November, Africa Watch interviewed Rwandan refugees in Belgium and conducted a two-week mission to Rwanda to investigate the general state of human rights. A report on the mission will be issued in early 1992.

SOUTH AFRICA

Human Rights Developments

In 1991, discussions among the main political rivals in South Africa — the government, the African National Congress (ANC) and the Inkatha Freedom Party (IFP) — resulted in various peace agreements. But escalating political violence remained the most serious obstacle to the transition to a post-apartheid South Africa. The violence reached unprecedented proportions in the country's bloody history, claiming the lives of over two thousand black South Africans in fighting between ANC and IFP supporters. Despite the government's stated commitment to a

negotiated settlement, credible evidence continued to emerge of brutality by the state security apparatus and its use of the IFP to undermine movement toward representative, democratic structures in South Africa.

The government continued to implement its reform process, started in February 1990. In June 1991, it abolished the Group Areas Act, which had segregated residential neighborhoods; the Land Act, which had denied blacks the right to purchase land in eighty-seven percent of the country; and the Population Registration Act, which had classified all newborn South Africans by race. President F.W. de Klerk said in Parliament on June 17, "Now everybody is free from the discouragement and denial...and from the moral dilemma caused by this legislation."

However, the prospect of continuing peaceful reform has been dimmed by the violence that has engulfed South Africa's black townships, claiming more than eleven thousand lives in bloody fighting since 1984. The killings, which started in Natal in the early 1980s and spread to the Transvaal in June 1990, assumed various forms during 1991. It initially involved random attacks by IFP members on ANC settlements, and fighting between squatters and hostel dwellers, the most deprived members of communities. A clear pattern of violence immediately before or after peace talks between the ANC, the IFP and the government became a major destabilizing factor in negotiations.

An Inkatha "*impi*," a group consisting of hundreds of armed IFP sympathizers, killed twenty-four ANC supporters on April 29, the day after an agreement had been reached by the ANC, the South African Communist Party and the Congress of South African Trade Unions. The agreement called on the government to take constructive steps to address the internecine violence by May 9 or face suspension of the constitutional talks. News video footage showed hundreds of men wearing red headbands, a trademark of the IFP. Streaming past police vehicles as they left a funeral service for Moses Khumalo, the assassinated mayor of Soweto and an IFP supporter, they sang and brandished weapons before going into houses and attacking residents. The footage shows police vans twice driving past without taking action.

Three days after the May 9 deadline, at least twenty-seven ANC supporters were killed in an IFP attack in Swannievillie squatter camp near Krugersdorp. Statements obtained by Lawyers for Human Rights, a leading South African human rights group, reported the involvement of one thousand men in the attack, all wearing red headbands, being escorted by white men and police vehicles. The police said that they only escorted the attacking "*impi*" back to their hostel, despite eyewitness

testimony that some police refused to stop the attackers while other police blocked exit routes from the attack. Only six attackers were arrested, three of whom were later released.

On April 1, the government responded to the threatened suspension of negotiations by disbanding the security police and merging it with the Criminal Investigation Department. Then Law and Order Minister Adriaan Vlok's assertion that the move "will remove the police from the political playing field" was proven wrong by such incidents as the Swannieville attack the next month.

On April 18, Minister Vlok issued a ban on the carrying of dangerous weapons including pangas, axes and bush knives, which IFP members commonly carry in "potential conflict situations." But following an argument by the IFP that spears are a necessary expression of their cultural identity, spears, ceremonial battle axes and pocket knives were exempted from the ban, thus failing to meet the ANC demand for a wholesale ban.

In 1991, it became increasingly clear that the violence is a legacy of the government's residency restrictions. One element is the hostel system, in which migrant workers, predominantly IFP supporters from Natal, are housed in townships far from their families, in miserable, single-sex dormitories. In the thirty-one townships surrounding Johannesburg, there are 120 such hostels housing 200,000 people. They have increasingly been identified as sources for recruitment, weapons and ammunition. IFP members repeatedly justified their mass mobilization because of fear of losing their "homes." This insecurity, rooted in the government's strict movement and residence control of the migrant work force and past policy of forced removals, assumed an ethnic dimension and was fueled by the ANC's demand that the government abolish the hostel system. The sense of fear and insecurity is a major cause of the conflict between the impoverished residents of hostels and ANC-dominated squatter areas, where similar sentiments of insecurity exist and where "self-defense units" against hostel dwellers have been deployed. Rather than seriously addressing the deeper source of the hostel and squatter problems — the government's policy of containing migrant workers in limited spaces at the peripheries of white cities — the government has indicated only its intention to "upgrade" the areas.

More sophisticated attacks increased in the latter part of 1991. With growing frequency, unidentified gunmen shot commuters, mourners at funerals, and groups at political rallies. The most disturbing statistics relate to the alarming rise in hit-squad actions. At least forty-six activists

were assassinated by gunmen in 1991. Although the much-criticized 1990 Harms Commission⁴¹ of inquiry into hit squads dismissed claims of their existence within the police force, the debate was reignited with the April 1991 judgment in a case involving two newspapers that are critical of the government, the *Vrye Weekblad* and the *Weekly Mail*. Lieutenant General Lothar Neetling of the security police had sued both newspapers for defamation as a result of their allegations that he had attempted to poison anti-apartheid activists. The court found that Neetling had attempted to mislead both the court and the Harms Commission, which had relied heavily on his testimony. Despite these irregularities and the hit-squad activities now linked to Neetling and the police force, the government has failed to establish another commission to investigate the hit squads.

During 1991, reliable evidence emerged corroborating earlier documentation by human rights groups and the press of police bias and involvement in the political violence. President De Klerk confirmed that in 1986 the South African Defense Force had trained a unit of 150 Zulu fighters in a camp called "Hippo" in Namibia. According to the government, they were trained for "security work and VIP protection." The fighters claim that they received training in urban and guerilla warfare and were used by Inkatha to attack ANC supporters in Natal.

Perhaps the strongest connection between the state and the IFP was the publication in July 1991 of documents revealing covert police funding to the IFP. Minister Vlok acknowledged payments of \$90,000 to Inkatha and \$500,000 to its trade union, United Worker Union of South Africa. In a ten-page memorandum to the chief of security police in Pretoria, dated February 13, 1990, Major Louis Botha, a senior security police officer, recommended that "a clandestine grant of R120,000 [\$42,000] be made available...to show everyone that he [Gatsha Buthelezi, the IFP leader] has a strong base." The funds were used to organize a rally where

⁴¹ The Harms Commission was flawed in both design and practice. The inquiry was limited to acts committed within the border of South Africa, although many anti-apartheid activists have been assassinated outside the country. Throughout the inquest, valuable evidence disappeared, and government witnesses testified in wigs and other disguises, and were not required to produce pertinent documents. The commission's report, which failed to name any special units or individuals of the army or police as participants in the death squads, was denounced by human rights groups as a "whitewash."

Buthelezi spoke against sanctions. Only a few supporters attended, and clashes between ANC and IFP supporters broke out before and after the rally.

Addressing the causes of the violence, Black Sash, a prominent South African human rights group, noted the "overwhelming circumstantial evidence of outbreaks of violence being orchestrated; of existing conflicts being used to exacerbate the violence; of police partiality." The Independent Board of Investigation into Informal Repression, an independent monitoring group, has collected evidence of incidents of intimidation by the IFP, deliberate attacks by IFP members on squatter camps, and numerous sworn affidavits by police officers alleging police involvement with the IFP. A survey by media and monitoring groups covering the Transvaal violence from July 1990 to May 1991 held the IFP responsible for sixty-six percent of the acts of aggression and the ANC for six percent. The Human Rights Commission reported that between January and June 1991, sixty people were killed and 349 injured in police actions. In response to allegations of its involvement, the police offered categorical denials and initiated only a few prosecutions and investigations.

The killings have continued despite various peace initiatives, such as the historical cease-fire agreements between the ANC and IFP leadership on January 29 and February 18, and the subsequent establishment of a Joint Peace Implementation Committee. However, peace talks between the government and the ANC scheduled for June were suspended due to a renewed outbreak of violence. On August 19, a four-person committee was established to monitor the spending of secret government cash. The most serious attempt yet to stem the violence took the form of a peace agreement on September 14 among the ANC, the IFP and the government. The agreement, in which the parties agreed on the establishment of a Commission on Violence, includes a code of political conduct, forbids provocative statements or actions, and is intended to promote political tolerance. As a result of allegations that the police and defense force have used black groups to promote violence, the agreement includes a ban on training or providing funds, weapons or ammunition to nonsecurity-force members to carry out actions which undermine a political party. It calls on leaders to refrain from using inflammatory language and to prevent the carrying of weapons, including "cultural" spears.

Nonetheless, killings continued under circumstances suggesting government involvement. In the week preceding the September

agreement, at least 135 black South Africans were killed in bloody fighting that erupted after gunmen ambushed IFP supporters and killed twenty-three people. Violence erupted simultaneously in Natal and the black townships around Cape Town. On the eve of the signing of the agreement, sixteen ANC and IFP members were killed and thirty-two injured in fighting outside Johannesburg. In the two months following the agreement, at least two hundred people died. On October 12, eighteen ANC supporters were killed by unknown assailants in an attack on a crowd marching home from the funeral of ANC member Sam Ntuli, who was assassinated in early September. In the majority of the attacks, witnesses reported seeing plainclothesmen in cars without license plates. The government's response to allegations of its involvement was, again, to issue a denial and to demand evidence to the contrary. However, the Commission on Violence, chaired by Justice Richard Goldstone, has begun to investigate the killings.

One devastating, cumulative effect of more than fifteen years of township violence is the demise of the country's black school system. Protests, vandalism of school property, and student and teacher strikes have culminated in the highest failure rate of black high-school examinations in South African history. In April, IFP supporters attacked two schools in Alexandra township, injuring numerous pupils and teachers. The IFP sees schools as "soft targets" because ANC self-defense units do not operate there. Many schools have closed down in the past few years and others have become overcrowded. The result at the end of 1990 was a thirty-six percent passing rate for blacks, as opposed to ninety-seven percent for whites.

The government continues to exert control through legislative and administrative mechanisms such as the Internal Security Act and the Public Safety Act, which have been used in the past to silence political opposition, although they were amended somewhat in 1991 by repealing or limiting the power to order house arrest, banish people to remote areas, and restrict association and movement. While no state of emergency now exists, at least seven black townships are still declared unrest areas under the Public Safety Act, giving security agents broad powers of arrest. The Internal Security Act also still provides for detention without trial for up to ten days without access to lawyers, family and the courts. The Human Rights Commission documented 176 cases of detention without trial between January and August 1991. In an agreement between the government and the ANC in August 1990, elaborate guidelines were adopted to effectuate the release of all political

prisoners by April 30, 1991. According to the agreement, an offense is political depending on the facts and the circumstances of the particular case, taking into account the motive, nature and purpose of the offense. Over six months after the deadline, more than nine hundred political offenders, including six in the homeland of Bophuthatswana, continue to be detained.

The violence has also severely affected two of South Africa's four so-called independent homelands. Despite official efforts to describe the violence as "local infighting," the pattern of violence shows it to be a result of the growing tensions between supporters of the homeland authorities and opposition to the homeland system itself. The homelands system has the effect of channeling black political discontent over repressive conditions in South Africa toward the homeland political structure, and homeland authorities have seldom hesitated to suppress such dissent. From January to August 1991, security forces in Bophuthatswana killed at least five, injured nineteen, arrested 244 and detained without trial thirty-eight. In Ciskei, they killed two, injured fourteen, arrested twenty-one and detained without trial thirty-three. In both Ciskei and Bophuthatswana, a strong military presence has been maintained to suppress opposition. Although the state of emergency in Bophuthatswana was lifted in March, repression by local authorities, backed by vigilante groups, continued. Violence reached a peak in the Braklaagte area of Bophuthatswana in January with the launching of a local ANC branch, as fighting erupted between opponents and supporters of the homeland regime. Over six thousand residents were forced to flee and were not permitted to return until June. A large police camp continues to occupy the Braklaagte village. Despite its stated intention to eradicate the last vestiges of apartheid, the South African government proceeded in early November to transfer about 2.5 million acres of land, encompassing twenty-five farms, to Bophuthatswana.

Both Bophuthatswana and Ciskei have bills of rights protecting fundamental freedoms. Yet, the freedoms of expression and association are severely curtailed by both homelands' National Security Acts, modeled on South Africa's repressive Internal Security Act before it was amended in June. The Acts provide for indefinite detention without trial, declare meetings of more than twenty people unlawful unless authorized, and provide the police with indemnity against prosecution.

On October 31, Brigadier Oupa Gqozo, the military leader of Ciskei, declared a state of emergency, only a few weeks after signing the September National Peace Accord in which he committed himself to the

promotion of political tolerance. Brigadier Gqozo gained power after a military coup in 1990, overthrowing the regime of Lennox Sebe. The state of emergency is the most serious in an array of measures designed to stifle opposition to Gqozo's regime. Under the emergency powers, organizations may be banned or restricted, individuals may be restricted, and businesses may be closed. The commissioner of the police may restrict media presence and prohibit distribution of printed material. The emergency also gives the police license to use violence. On October 28, 1991, Gqozo stated publicly on Radio Ciskei: "I say to the police they should hit silly people on the head because the courts take a long time while they [his opponents] continue to burn people."

Since June 26, when Gqozo launched a cultural organization, the African Democratic Movement (ADM), the government has made a concerted attempt to eliminate any form of opposition. At the launching of the ADM, Gqozo publicly stated his intention to "clean up Ciskei." One of the aims of the ADM, of which Gqozo is president, is to recruit traditional community leaders with the aim of moving local government under the direct control of the military regime. Subsequently, two ministers sympathetic to the ANC have been dismissed "for purposes of unity in the government." Radio Ciskei employees have also been dismissed, detained and harassed for providing government opponents an opportunity to air their views. Through the use of internal boards of inquiry into misdemeanors that were committed years ago, Gqozo also has attempted to remove officers in the police force who might oppose him.

The state of emergency was declared in the wake of growing friction between ANC supporters and the homeland authorities. One of the main causes of conflict is the imposition of unrepresentative, appointed "chiefs" over elected regional representatives. As resulting tension within communities escalated into violence between opposing factions and widespread destruction of homes, the state of emergency was announced, clearly as a device to silence dissent. Community leaders were detained without any attempt to negotiate an end to the violence. Only after national and international pressure did the government lift the state of emergency on November 17.

Numerous reports of the Independent Board of Investigation into Informal Repression (IBIIR) indicate collaboration of South African security forces with homeland authorities and allied vigilante groups. The IBIIR has documented activities of a Ciskei intelligence group, International Researchers (IR), which was headed by former members of

the South African Defense Force (SADF) and has been involved in hit-squad activities. IR has had close relations with Brigadier Gqozo. Although IR was officially disbanded on August 30, there are numerous reports of a continuing SADF presence in the region.

On September 4, the South African government proposed the abolition of the homelands. In a document which will be presented to an eventual constitutional convention, the government envisions a federal South Africa consisting of nine regions or states — none a homeland. However, despite this proposal, no attempt has been made to abolish the existing legislation providing for the homelands as separate independent states. Furthermore, the government has repeatedly denied responsibility for violence in the homelands while it continues to support the homeland authorities with military and economic assistance. The government also declared that it would not intervene to revoke the state of emergency in Ciskei.

The Right To Monitor

Since the lifting of the nationwide state of emergency in June 1990, monitoring groups have been in a position, for the first time since 1985 when the emergency was originally imposed, to monitor human rights abuses. Despite this important step, the Internal Security Act, even after the June 1991 amendments, still provides for the banning of an organization if the minister of law and order has "reason to believe" that it uses, threatens to use, or encourages violence or disturbance to overthrow or challenge state authority or to bring about change.

In Bophuthatswana, human rights groups such as Black Sash, its affiliate the Transvaal Rural Action, and the Bafokeng Women's League are banned. Beginning on October 17, the Mafikeng Anti Repression Forum, the only organization allowed to monitor abusive practices by the government in Bophuthatswana, has been banned for several weeks from visiting prisons and hospitals there.

Another important impediment to human rights monitoring, as well as an indication of the South African government's ambivalent response to the violence, is a series of laws that in certain circumstances make it a crime to report on the violence and to document the government's involvement. The Protection of Information Act prohibits the possession or publication of any document obtained from a "prohibited place" and carries penalties of up to ten years' imprisonment and a fine of up to

three thousand dollars. The police have been investigating whether a document obtained by the *Weekly Mail* and the *Guardian* of London, which discloses the government's funding of the IFP, was stolen. Freedom of the press is further inhibited by the Police Act, which imposes a sentence of up to five years and a fine of up to \$3,000 on a journalist who publishes false information about the police without having "reasonable grounds" for believing it to be true. Particularly because the burden of proving "reasonable grounds" is on the journalist, reporting on police activity is severely impeded. The Criminal Procedure Act requires journalists to identify their sources of information, contrary to their professional code of conduct. Throughout the year, numerous local and foreign journalists were imprisoned for refusing to disclose this information.

U.S. Policy

Nineteen ninety-one marked the end of five years of U.S. economic sanctions against South Africa. Half a decade ago, a nearly united Congress took control of U.S. policy toward South Africa, imposing sanctions over the veto of President Ronald Reagan. On July 10, 1991, President Bush announced the lifting of sanctions, despite remaining obstacles to a peaceful post-apartheid South Africa, including unprecedented violence, the continuing existence of the homelands and the ongoing detention of prisoners whose release had been agreed to. There was little congressional opposition to the president's decision, largely because most members were persuaded that the reforms introduced by President de Klerk met the specific standards of the Comprehensive Anti Apartheid Act (CAAA). In announcing the end of the U.S. embargo, President Bush stated:

This is a moment in history which many believed would never be attained. But we've done so through the efforts of many people in South Africa and around the world. And in that sense this is a time for reflection. And it is also a time when all who care about the future of South Africa, as I do, should rededicate themselves to stay the course in the interest of peace and democracy. There has been a dramatic change. But all is not totally well there, and we will continue to be actively involved — as actively involved as we can.

Sanctions that remain in place include the mandatory U.N. embargo on arms exports and imports, the prohibition of exports to the South African military and police, restrictions on U.S. support for International Monetary Fund loans to South Africa, and the Fair Labor Standards Program, which applies to U.S. firms employing more than twenty-five persons in South Africa.

In making its case for the lifting of sanctions, the Bush Administration argued that all the conditions under the 1985 CAAA had been met: the release of political prisoners, the repeal of the state of emergency, the unbanning of opposition political parties, the repeal of apartheid legislation, and the entering of the government without preconditions into good faith negotiations with representative members of the black majority.

The condition that caused the most controversy was the Administration's claim that South Africa had released all political prisoners. The framework under which political prisoners were released had been negotiated by the ANC and the government in an August 1990 agreement known as the Pretoria Minute, and subsequent agreements. While the government released thousands of prisoners under the agreement and more after remitting their sentences, more than seven hundred politically motivated offenders continue to be detained. The Bush Administration concluded that all political offenders had been released based on its definition of political prisoners as "people who have been imprisoned for their political beliefs [which] does not include people who have been convicted under due process for crimes of violence." While this definition is similar to those used by international human rights organizations, it is narrower than the one used in the Pretoria Minute, which includes some acts of violence.

Of particular controversy were 166 political prisoners who were held at the time in jails in Bophuthatswana homeland. Under the Pretoria Minute, these prisoners are regarded as political because they were convicted of treason after an abortive coup attempt against the Mangope regime in 1988. The Administration's exclusion of the Bophuthatswana prisoners is troublesome because it rested on the fiction that the homeland governments were independent of the South African government. It has long been U.S. policy not to recognize the independence of the homelands, which only South Africa regards as independent states. Notwithstanding the explicit provision in the CAAA holding that the homelands are part of South Africa, the Administration argued that the CAAA never envisioned the incorporation of the

homelands into South Africa as a condition for the lifting of sanctions and thus does not address political prisoners held by homeland authorities. The result was that the Administration, in its rush to end sanctions, effectively endorsed the independence of Bophuthatswana and squandered an opportunity to press for the release of the remaining political prisoners in that homeland.

Apparently in an effort to mitigate the effect of this decision, Assistant Secretary of State for African Affairs Herman Cohen, in a July 31 statement before the House Subcommittees on Africa and on International Economic Policy and Trade, said: "I wish to emphasize that we have consistently urged the South African government to bring its full influence to bear in resolving this issue, specifically in Bophuthatswana." Such toothless "urg[ing]" was not enough. Although some of these prisoners were released for "behavioral and attitudinal" reasons and a handful for "humanitarian" reasons after suffering from health problems following a hunger strike, at least one prisoner died and eighty-seven remained in prison until mid-December, when all but six were released.

Although the CAAA does not explicitly require that political violence be taken into consideration, the devastating dimension of the problem — more than six thousand lives lost in the past eighteen months — should have prompted the Administration to discuss the South African government's role in the violence in the context of deciding whether to lift sanctions. To the contrary, the Administration refused even to acknowledge the role of the security forces in the killings. On March 28, after numerous killings in March — especially in Alexandra, outside Johannesburg, where seventy people were killed — State Department spokesman Richard Boucher stated:

The police have announced that they are investigating the incident. At this point, as far as who is responsible there is only speculation that involves the possibility that there were Inkatha sympathizers or elements of some rightist third force

On July 10, a week before the press published documents exposing covert government funding of the IFP and minutes after President Bush announced the lifting of sanctions, Secretary Cohen said in response to allegations of the South African government's involvement in the violence:

We have looked at all of the accusations. We have deployed our own resources to try and find out. We have seen no evidence that the South African government entities are supporting black-on-black violence. This does not exclude the activities of private citizens, which we're not aware of. But we have seen no evidence that the government entities are doing anything in that line.⁴²

Even after the South African government acknowledged support of the IFP, Secretary Cohen, clearly evading the question of government involvement in the IFP's violence, said:

We are following these developments closely and will take appropriate action. However, it does not lessen our conviction that an irreversible process of change is occurring in South Africa.

Boucher, the State Department spokesman, was somewhat more direct on July 22, but again refrained from condemning the South African government for its covert activities. He said:

We would call upon the government of South Africa to take action to terminate all activities which undermine the political system created by reforms initiated since February 1990, and to take appropriate action against all persons found responsible for illegal acts. I believe that the integrity of the negotiating process requires nothing less.

To its credit, the Bush Administration has encouraged the government, the ANC and the IFP to negotiate. But an emphasis on negotiations without comparable public concern over the government's role in political violence can have dire consequences, because since the beginning of 1991, the bloodiest violence has occurred during negotiations. This outbreak of violence has been a predictable consequence of the security forces's policy of using the IFP to instigate violence and disrupt the peace process. For example, on September 8, a week before the first major peace agreement was to be signed, violence clearly aimed at derailing the negotiations erupted in what the South

⁴² *New Yorker*, August 19, 1991.

African press described as "Bloody Sunday." The next day, spokesman Boucher responded: "The weekend events were tragic and they illustrated once again the need for an agreement among the principal parties on a peace accord that will govern public political activity."

The Administration's stubborn refusal to see an official hand behind the killings was particularly evident in the South Africa chapter of the *Country Report on Human Rights Practices for 1990*, issued by the State Department in February 1991. The Department accurately identifies the violence as the most serious obstacle to a peaceful future in South Africa, but fails to comment on the role of the security forces. Instead, as in the past, it treats the violence as a domestic problem of political and ethnic rivalries. Although the State Department notes the belief of others that a "third force" of "right-wing extremist elements of the security forces" is behind the fighting between ANC and IFP supporters, the report concludes that "evidence of this was lacking."

On June 18, President Bush extended a warm welcome, of the sort usually reserved for major foreign leaders, to Gatsha Buthelezi, leader of the IFP. At the time, the IFP, together with South African security forces, had been implicated in most of the violence. Numerous witnesses had described IFP intimidation and harassment, and a former military-intelligence agent had testified that the IFP received arms from the government. Though initially denying it, Buthelezi admitted receiving funds from the government a month later. Yet, there was no public discussion at any time during his U.S. visit of the IFP's role in the violence. Instead, President Bush announced publicly in Buthelezi's presence, in a manner designed to convey a reward to him, the Administration's intention to lift sanctions soon. In August, the U.S. Agency for International Development announced a grant of \$2.5 million to the IFP, part of a ten million dollar "Transition to Democracy" project for South Africa which was initiated in 1990 by President Bush, with all funds to be used on behalf of victims of apartheid.

Although an irreversible process of change is undoubtedly underway in South Africa, as stated by the Bush Administration on numerous occasions, a peaceful negotiated settlement will not be attained until there is an end to the violence and those implicated in the killings have been brought to justice. The Administration's role in encouraging reforms would have been more effective had it been willing to recognize the role of government forces in the killings and call for a halt to their deadly practices.

The Work of Africa Watch

In January, Africa Watch released a report, *The Killings in South Africa — The Role of the Security Forces and the Response of the State*. The report contains dozens of eyewitness accounts describing security forces promoting the violence and failing to respond to the needs of the victims.

Several detailed letters were sent to the South African government in 1991 protesting covert government funding to the IFP, the lack of effective steps to end the violence, and continuing restrictions on press reporting of the violence. Africa Watch also supplied congressional aides with updated information on political prisoners, including those in the homelands. This information contributed to the adoption of legislation by Congress to urge the release of all political prisoners.

An April report, *Academic Freedom and Human Rights Abuses in Africa*, included a substantial chapter on South Africa.

Throughout 1991, Africa Watch documented human rights abuses in the homelands and contacted the South African authorities to protest their failure to alleviate appalling conditions there.

In September, Africa Watch released a newsletter, "Out of Sight: The Misery in Bophuthatswana," which gave an account of repression in one of South Africa's four homelands. In December, "Ciskei: Ten Years on Human Rights and the Fiction of 'Independence'," a newsletter detailing the conditions in Ciskei, was released.

SUDAN

Human Rights Developments

During 1991, the military government headed by Lieutenant General Omer al-Bashir strengthened its grip on Sudan. It increasingly institutionalized its authority and moved purposefully in the direction of creating its version of a fundamentalist Islamic state.

The centerpiece of the government's legislation was the promulgation in March of a new Islamic penal code, which contains a number of provisions that are contrary to international human rights

standards. These include the withdrawal of full rights from women and non-Muslims; the prohibition of apostasy (renouncing Islam), which effectively criminalizes dissenting political views; and the introduction of cruel, inhuman and degrading punishments, such as amputation of limbs for theft. However, these measures have been implemented cautiously, and there have been only a few cases in which the extreme punishments have been carried out — notably several cases of public hanging followed by crucifixion of convicted robbers in the Darfur region. There have been no prosecutions for apostasy to date. The government, which abrogated the independence of the judiciary following the June 1989 coup, is gradually installing politically loyal individuals throughout the judicial system.

Other examples of the institutionalization of the repressive machinery included continued attempts to create an illegitimate trade union organization, to replace the authentic unions dissolved at the time of the 1989 coup, and the reorganization of the higher education system to bring it under closer government control. A particularly insidious move was the creation of a government-sponsored "Sudan Human Rights Organization" which, using the name of a genuine organization banned in 1989, has defended the government's record. Similarly, a government-sponsored Sudan Bar Association has continued to defend the government's human rights record, and its secretary-general has denied publicly that torture occurs in Sudanese prisons and detention centers.

Political parties and other nonreligious organizations independent of the government remain prohibited. There is no freedom of assembly, and only a few government-controlled or government-sponsored newspapers are permitted to publish. Publications entering and leaving the country are carefully screened. Certain areas of the country have been subjected to prolonged and comprehensive news blackouts, usually because of counterinsurgency activities in the area. The treatment of political opponents has also been shrouded in increasing secrecy. In September and October, about seventy people accused of participating in an alleged coup attempt in August were said to be brought to trial, but the government failed to divulge the names of the defendants, the charges, the court, or the date of the proceedings.

The government continues to detain and torture suspected opponents. Detentions occurred at various times in 1991, notably after an alleged coup attempt in September. In April, the government announced an amnesty and released 240 political detainees; however, about sixty remained in prison, and numerous others were arrested in the following

month. The unofficial detention centers, known as "ghost houses," in which torture is common, continue to function under the control of the government's security agencies. A number of detainees have been brought to trial before special tribunals or ordinary courts, but in no significant case has due process been respected.

Abdel Moniem Salem, a teacher who was arrested in February 1990, was kept at Shalla prison under poor conditions, at the insistence of the security forces, for six months after his transfer to a hospital was first requested, despite his deteriorating health and repeated interventions by doctors. When he was finally transferred, his condition deteriorated and in the new year of 1991, he died.

The main targets of government repression in 1991 were trade unionists, academics and students at the universities, and military officers. A series of disturbances at the universities of Khartoum and Gezira followed the government's arbitrary dismissal of lecturers and disputes over accommodations. Security forces entered the campuses on several occasions and used indiscriminate violence against students: at least one was shot dead. Strikes by railway workers also led to violence by government forces. In addition, a prominent British professor of political science was invited to the University of Khartoum in September, but on arriving at the airport was turned back by security forces.

In addition to the legal discrimination instituted in the March Penal Code, women are subject to discrimination in employment. In November, the government decreed that all women should henceforth wear a strict Islamic veil, concealing not only their hair but also the lower part of their face, contrary to Sudanese custom.

The famine, which was created largely by government actions in 1990, continued into 1991, although a better harvest and more appropriate government policies led to an improvement in the final months of the year. In early 1991, the government finally admitted the extent of the crisis and began to relax some of its conditions on allowing relief agencies to operate. However, considerable obstacles still remained, and the government continued to direct food to urban centers and away from camps for more needy displaced people. In the south, the government continued to obstruct relief efforts, notably by bombing distribution centers and refusing permission for relief flights to operate at certain times. In late May, as refugees returned from Ethiopia to southern Sudan (see the above chapter on Ethiopia), the Sudanese air force bombed the returnees on two occasions, killing over fifty civilians.

The war in the south, the principal conflict in Sudan, remained a major source of human rights abuse. Government forces were active, often in conjunction with militias, in Kordofan and Upper Nile. Although details are not available, there are credible reports of abuses against the civilian population including villages being burned and civilians killed.

The government was also engaged in intensifying counterinsurgency activities in western Sudan, in the Darfur and Kordofan regions, sometimes under the cover of operations against "bandits." There were reports of villages in Darfur being destroyed by aerial bombardment, and several incidents in which civilians of the Zaghawa and Fur ethnic groups were killed. In the Nuba mountains, there were two distinct patterns of abuse. One was attacks on rural villages, primarily by the Popular Defense Forces; dozens of villagers were killed by these raids during the year. The second was the detention and disappearance of Nuba community leaders and educated people at the hands of military intelligence. Between January and August, at least thirty-seven such people disappeared following their detention by military intelligence, and in October about one hundred people were reported to have been detained; many are feared to have subsequently disappeared.

The rebel Sudan People's Liberation Army (SPLA) was also responsible for abuses, including violence against civilians and prisoners of war, and the conscription of children. These abuses, together with the detention of political dissidents within the SPLA and the debacle of the organization's support for the doomed regime of President Mengistu Haile Mariam in Ethiopia, contributed to an attempted coup in August, in which the military commanders of Upper Nile tried to overthrow the SPLA's leader, Colonel John Garang.

Several prominent SPLA dissidents remain in detention, including the veteran politician Joseph Oduhu. Reports of forcible conscription of soldiers have been received from several areas. Several tens of thousands of boys, most of them under fifteen years of age, were also in the SPLA forces, either as combatants, undergoing military training, or undergoing schooling prior to military training. In Ethiopia, the SPLA was responsible for numerous incidents of burning villages and looting food and cattle, and some instances of killing civilians. Following the split in the SPLA, there was intense fighting between the two factions during September and October, which displaced tens of thousands of civilians.

The Right to Monitor

Before the military coup of June 1989, which brought the current regime to power, Sudan had a strong and extremely active human rights community. The two most prominent organizations were the Sudan Bar Association and the Sudan Human Rights Organization. Smaller organizations included the Sudanese Amputees Union, the Sudan branch of Amnesty International and a number of independent human rights activists, including academics and journalists. In the last two years, human rights organizations have been banned and their assets confiscated, and virtually all activists have been detained, silenced or driven into exile.

In 1991, the government embarked on a policy of establishing new "human rights" organizations to defend its record. These include a government-appointed "Bar Association" and an officially sponsored "Sudan Human Rights Organization," neither of which is independent of the government. There are fears that the government-sponsored Sudan Human Rights Organization will be allocated the frozen assets of the legitimate organization, which were raised by public subscription and donations from individuals and international human rights organizations. In July, the new Sudan Human Rights Organization attacked Amnesty International as a "political arm" of western countries. The government also attacked Africa Watch in 1991 as a "tool" of the SPLA.

No international human rights organization was permitted by the government to enter the country to monitor human rights in 1991. Limited access to SPLA-controlled areas was possible, however, both before and after the split.

U.S. Policy

U.S. interest in Sudan was low in 1991. In March 1990, following the Sudanese government's failure to make any move toward restoring democracy after the June 1989 military coup, the U.S. government suspended all development assistance to Sudan under Section 513 of the Foreign Assistance Act, which mandates a cutoff in most U.S. aid to any nation where an elected government has been overthrown in a coup. However, food aid under P.L. 480 and humanitarian assistance are permitted to continue.

In 1991, that estrangement was deepened following the Sudanese government's support for Iraq during the Persian Gulf crisis, and its

failure to reach agreement with the International Monetary Fund on the repayment of debts. As relations with Sudan worsened, the U.S. government became an outspoken critic of its human rights record.

The U.S. Agency for International Development was active in famine relief operations in Sudan. It contributed over 100,000 tons of emergency relief and pushed other western donors to overcome varying degrees of reluctance and do the same. The aid was distributed by voluntary agencies. The U.S. government also overcame past hesitancy and repeatedly criticized obstruction of relief efforts. In the south, where the relief operation is led by the United Nations, the United States contributed resources but did not play a major role in initiating programs.

The Work of Africa Watch

Africa Watch has continued to monitor human rights abuses in Sudan. Early in 1991, Africa Watch produced a newsletter containing detailed testimonies of torture and substandard prison conditions. Following the promulgation of the Islamic penal code, Africa Watch published a newsletter describing the provisions of the code and drawing international attention to those that are contrary to human rights standards. A report issued in April, *Academic Freedom and Human Rights Abuses in Africa*, included a substantial chapter on Sudan. Frequent protests were sent to the Sudanese authorities concerning detentions and trials without due process. An article was published in October in *West Africa* on women's rights in Sudan. In December, Africa Watch issued a newsletter drawing attention to the plight of the Nuba of southern Kordofan, to coincide with a publicity campaign by the London-based organization Survival International.

An Africa Watch report on war and famine in Ethiopia (see the above chapter on Ethiopia) included several sections criticizing the SPLA, which was active inside Ethiopian territory from 1983 to 1991. Abuses by the SPLA against Ethiopian civilians included looting, killing and enslavement.

Africa Watch nominated the original Sudan Bar Association (SBA) for the American Bar Association's first human rights award. The nomination was successful and Dr. Amin Mekki Medani of the SBA, who had himself been detained by the current regime, traveled to the United States in August to receive the award. In September and October, Africa Watch

was active in promoting the relaunching of the Sudan Human Rights Organization (SHRO) in exile. We published a newsletter detailing the activities of the genuine SBA and SHRO, and contrasted their authenticity with the illegitimate clones set up by the government.

AMERICAS WATCH OVERVIEW

Human Rights Developments

The trend witnessed over the last decade toward elected civilian government in Latin America and the Caribbean experienced a serious challenge in 1991, as the Haitian military on September 30 overthrew the only freely elected government that Haiti has known in its nearly two hundred-year history of independence. The coup was accompanied by a killing rampage by Haitian troops unparalleled even in that troubled nation's recent history. Nonetheless, encouragement can be drawn from the unified response of the hemisphere's governments, which have coordinated diplomatic and trade efforts through the Organization of American States (OAS) to reverse the coup and restore Jean-Bertrand Aristide to the presidency.

Elsewhere in the hemisphere, the spread of elected government continued with the May 25 presidential elections in Suriname, reinstating an elected civilian government after a December 1990 military coup. The government's principal challenge is to assert civilian authority over military strongman Colonel Desi Bouterse, who has exercised *de facto* control, when not formally governing the country, since overthrowing the elected civilian government in a prior coup in February 1980. In Paraguay, the nation's first-ever municipal elections on May 26 marked a significant broadening of political pluralism there. Only the government of Fidel Castro in Cuba continued to resist pressure to open up its political system, instead jailing scores of independent activists for their peaceful advocacy of change and subjecting others to violent "acts of repudiation" orchestrated by security forces.

Despite this salutary trend toward democratic governance, the hemisphere's worst human rights offenders remain the security forces of some elected civilian governments. In Colombia, El Salvador, Guatemala and Peru, government forces are engaged in widespread political assassination, disappearance and torture of civilians perceived as opponents. The use of torture by the police also is frequent in Ecuador and Honduras, both of which have been governed by elected civilians for at least a decade, and in Mexico, where elections have been held for more than sixty years, albeit amid sustained charges of widespread fraud. The persistence of violent abuses in these countries illustrates the dictum that

elections, even when free and fair, do not in themselves guarantee human rights.

Efforts to end internal armed conflicts moved ahead in Colombia, El Salvador and Guatemala in 1991, but as of December, had yet to bring peace to any of these nations. In each country, serious breaches of the laws of war were committed by government and guerrilla forces, even while peace talks proceeded. In El Salvador, negotiations produced significant informal agreements on human rights issues such as the establishment of a "Truth Commission" and the purging of human rights violators from the officer corps. Moreover, the United Nations installed a human rights verification commission of over one-hundred members — an unprecedented development. These accomplishments leave room for optimism about the human rights situation in El Salvador, although they have yet to bring a halt to the steady stream of assassinations, disappearances and torture that has plagued El Salvador over the last decade.

In Colombia, negotiations with one of the country's three largest guerrilla organizations — the Popular Liberation Army — were successfully concluded in 1991, while discussions with the two major groups still in arms were initiated in mid-year but failed to reach a cease-fire. Those still fighting — the Revolutionary Armed Forces of Colombia and the National Liberation Army — killed many civilian leaders in the countryside in 1991 and conducted kidnappings-for-ransom, all violations of the laws of war. For its part, the Colombian army continued to employ "dirty war" tactics in its war against the guerrillas, including disappearances, massacres, selective assassinations, arbitrary arrests, and aerial strafing and bombardment of civilian targets. Hundreds of civilians continued to flee conflictive areas and join the ranks of the displaced living precariously in urban areas.

The tremendous violence associated with the government's war against the Medellín drug cartel all but ended in the second half of 1991 as the government negotiated the surrender of major traffickers in exchange for an end to extradition and leniency for those who turned themselves in. Paramilitary groups — responsible for scores of massacres of civilians in 1988 and 1989 — continued to carry out violent abuses, although in 1991 there were fewer mass killings than in those years. A series of decrees enacted by the former government of Virgilio Barco contributed to delegitimizing these groups, which had enjoyed a quasi-legal status as "self-defense" associations.

In Peru, both official forces and the insurgent Shining Path continued to murder and torture with abandon and to force civilians into the conflict, while the lesser rebel group, the Túpac Amaru Revolutionary Movement, carried out selective assassinations and bombings. For four straight years, Peru led the world in new disappearances reported to the United Nations. Although there was some reduction in new disappearances in 1991, the practice continued at a high rate. President Alberto Fujimori, who completed a year in office in July, has failed to offer the fresh approach to counterinsurgency that his campaign had advertised, and instead has delegated ever-widening authority to the military to conduct the war its way. The government has expanded the territory under state of emergency — effectively military government — to encompass nearly half the national territory and more than half the population. Human rights abuses historically have risen in areas placed under emergency rule.

The Guatemalan government of Jorge Serrano Elías, which will complete one year in office in January, has also initiated peace talks, with guerrillas who have been fighting for more than a decade. However, the dialogue reached a deadlock in September over human rights issues, and there is little hope for a quick end to fighting. While actual combat is sporadic compared to the warfare engulfing large areas of Colombia, El Salvador and Peru, the army exercises a profoundly repressive form of permanent counterinsurgency in conflictive rural areas. In addition to the assassinations, disappearances, torture, threats, intimidation and illegal detentions carried out directly by the army, important parts of the counterinsurgency effort — and accompanying abuses — are delegated to military-organized civil patrols installed in most highland villages. The army also commits massive violations of the freedoms of association and movement through forced participation in civil patrols and forcible relocation of displaced civilians to so-called model villages.

Rural violence against peasants and their advocates in the context of land disputes remains a significant concern of Americas Watch, particularly in Brazil, Ecuador, Honduras, Mexico and Paraguay. Americas Watch takes no position on the question of rightful ownership of the lands in question; rather, we address the use of violence against those who try to defend their claims, when that violence is supported or tolerated by agents of the state.

In Brazil, forced labor on remote rural ranches in the northern and western frontier states persists, largely because of the government's failure to pursue reported incidents. Meanwhile, the government of the

Dominican Republic responded to mounting international pressure to end the widespread use of forced Haitian labor in its state sugar industry by striking back at the victims, summarily and abusively deporting thousands of Haitians and Dominico-Haitians, without regard to whether they were Dominican citizens. Thousands of other ethnic Haitians fled to avoid being caught up in the abusive process.

Accountability for past and present abuses has been a prime concern of Americas Watch in virtually every country that has experienced serious violations. In places where abuses are systematic — as is the case of torture, illegal detentions, disappearances and assassinations by government agents in Colombia, El Salvador, Guatemala, Mexico and Peru, as well as the case of torture in Honduras and death-squad operations against common-crime suspects in Brazil — the agents responsible for the abuses commit them with impunity. Breaking through this barrier — making punishment the predictable result of crime committed under color of authority — is fundamental to ending human rights abuses in these countries. Convictions have been obtained in a handful of the most notorious cases, such as the Salvadoran army's November 1989 slaying of six Jesuit priests and two women, and the Guatemalan army's December 1990 massacre of thirteen Tzutuhil Indians near the lakeside town of Santiago Atitlán. Americas Watch welcomes these prosecutorial actions, but believes them to be token steps taken under the glare of the international spotlight, and thus not enough to end the systematic practices that the crimes represent.

Accountability for abuses committed by previous governments is also crucial, both in establishing a clear historical record of atrocities and in preventing their recurrence. This issue was addressed directly in Chile with the publication on March 4 of an immense and detailed report by the National Commission on Truth and Reconciliation. The report documented 2,279 cases of political execution and disappearance during the period of military rule from 1973 to 1990. Although acts of violence by armed opposition groups were among the cases examined, the vast majority of crimes exposed by the report were traceable to official forces. The report, and its moving presentation to the nation on March 4 by President Patricio Aylwin, made a significant contribution to stimulating debate about the past and vindicating the reputations of the victims.

While legislation is pending on compensation for the survivors, the possibility of prosecuting military personnel, or even civilian members of the security police, for the crimes documented in the report is limited by an amnesty law decreed by the former military regime covering the

period of September 1973 to March 1978, when the bulk of the violations occurred. The possible exception to the rule of impunity for past violations in Chile is the September 21, 1976 assassination in Washington of former Foreign Minister Orlando Letelier and U.S. citizen Ronni Karpen Moffitt, who died when a bomb detonated under their car. Under U.S. pressure, the assassination was excluded from the amnesty. Several individuals involved in the assassination plot are in jail in the United States, and in September, a civilian judge in Chile indicted the former director of Chile's secret police, retired army General Manuel Contreras, and his former operations director, active-duty Colonel Pedro Espinoza. The two are in custody.

In Paraguay, courts are investigating a dozen cases involving torture and assassination during the regime of General Alfredo Stroessner, which reigned from 1954 until 1989. Several prominent police figures of the Stroessner era are in custody, but none has yet gone to trial. The desire to stem the flow of Haitian refugees also seemed to have tempered the Administration's criticisms of the brutal military regime in Port-au-Prince. Paraguay is the only new democracy in the Southern Cone where no amnesty law protects those responsible for human rights abuses during past regimes.

In Uruguay, the crimes of the military dictatorship have gone unpunished, but in 1991 the government settled several lawsuits brought by victims of abuse with compensation packages that include an admission of state liability. In Argentina, Congress and the Executive have moved to provide compensation to thousands held in administrative detention during the military dictatorship.

Also in Argentina, a kidnapping ring unveiled in November provided a grim reminder that the laws precluding human rights trials and the presidential pardons that ended the cycle of truth and justice were a serious mistake. Many high-ranking Federal Police officers and civilian intelligence agents arrested for their role in the kidnapping ring had been accused of serious human rights violations committed during the "dirty war" waged by the military dictatorship in the 1970s. They were still on active duty because the *Punto Final* (Full Stop) and Due Obedience laws had limited prosecutions to all but a few high-ranking officers.

The Right to Monitor

Human rights monitoring remains a tremendously dangerous business for domestic activists in many countries, and has proved deadly in 1991 for several individuals in Colombia, Guatemala and Peru. Even in countries where monitors need not fear being killed for their work, threats, harassment and intimidation are an occupational hazard. Four human rights activists were murdered and a fifth disappeared in Guatemala in 1991. In addition, three sons of Guatemalan human rights monitors were also slain. The activists were members of the rural human rights group CERJ.¹ Evidence suggests the involvement of the security forces or civil patrols in most of the cases. President Serrano has further endangered Guatemalan monitors by publicly voicing his conviction — unsupported by evidence — that CERJ and its director are in league with leftist guerrillas.

Peru's beleaguered human rights movement is attacked physically and rhetorically by both sides. The insurgent Shining Path assassinated human rights advocate Porfirio Suni Quispe in 1991, while government forces are suspected of having sent a letter bomb that exploded in the hands of human rights attorney Augusto Zúñiga Paz, taking off his forearm. President Fujimori has on numerous occasions effectively encouraged violence against monitors by slanderously linking them with the Shining Path. Meanwhile, the Shining Path has publicly denounced human rights as a "bourgeois" concept created to "deny class struggle."

Two human rights monitors were murdered in Colombia in 1991 and many more received serious threats while investigating cases involving the army. Government agents or paramilitary death squads are suspected in the two killings.

U.S. Policy

The gradual falling away of Cold War attitudes in Washington has created a tremendous opportunity for the United States to use its undeniable influence in the hemisphere as a force promoting human rights. Unfortunately, the record is highly disappointing. To a large extent, Washington's preoccupation with fighting the "drug war" on Latin

¹ Council of Ethnic Communities "We Are All Equal"

American soil has obscured concern for human rights, just as Cold War considerations about communism preempted human rights principles in the 1980s. Drug-war priorities have impelled the United States to provide substantial aid and equipment to police and military forces engaged in widespread abuses against the populations in Colombia, Mexico and Peru. Congressional efforts to condition military aid to Peru on respect for human rights led to the announcement of possibly significant human rights reforms, but similar efforts are lacking with regard to Colombia and Mexico, where the flow of U.S. aid and the accent on militarization only contributes to severe human rights problems.

With few exceptions, the Bush Administration continues the tradition established by its predecessor of withholding human rights criticism in countries with elected civilian governments. Thus the enormous human rights problems in Brazil go unmentioned, as do those in Colombia and Mexico. Under pressure from human rights groups and the U.S. Congress, human rights have become an important bilateral issue in El Salvador, Guatemala, Honduras and Peru. Yet even in those countries, what should be an unequivocally stern message is undermined by other Administration actions, such as the unquestioning provision of Economic Support Funds to Guatemala, the failure to use military aid as a lever for improvements in Honduras, and the release in compliance with congressional conditions on aid of a "determination" that Peru respects human rights, when all available facts indicate otherwise.

The increasingly desperate economic plight of most countries in Latin America and the Caribbean increases Washington's already substantial leverage. This should be used to send a consistent and strong message that systematic human rights violations must end. In addition, the United States should raise its voice in favor of accountability for past abuses — often the key rights issue in countries experiencing transitions from military to civilian government.

In Haiti, the Bush Administration has played a positive role, supporting hemispheric efforts to restore the legitimate elected government of President Aristide and refusing to recognize the soldiers who seized power on September 30. At the same time, the Administration has appropriately taken issue with President Aristide's tolerance, and on occasion encouragement, of popular violence and threats of violence against alleged government opponents. These abuses have contributed to the army's adamant refusal to contemplate Aristide's return.

However, the Administration's concern with Haitians' human rights quickly ended for those who sought to flee political persecution and

violence by taking small boats headed for Florida's shores. Until a federal court temporarily halted the process, the Administration forcibly returned over five hundred Haitians to Port-au-Prince after summary proceedings without the presence of counsel in hearings that were incapable of reliably distinguishing political refugees.

The Work of Americas Watch

Americas Watch has continued its persistent scrutiny of human rights violations in 1991 with the publication of twenty-seven reports and newsletters covering eighteen countries based on thirty-eight missions to the countries covered. On eight occasions, we testified about human rights concerns before congressional committees.

In the latter half of 1991, we devoted special attention to Peru, as the Bush Administration, attempting to satisfy congressionally imposed human rights conditions on aid, declared that the Peruvian authorities respect human rights. The certification was designed to win release of military aid and security assistance to combat drug production and trafficking in Peru. Timed to coincide with the debate in Congress, Americas Watch issued a report, *Into the Quagmire: Human Rights and U.S. Policy in Peru*, which evaluated human rights conditions during President Fujimori's first year and opposed U.S. military aid in light of those conditions. The recommendations made in the report for changes in Peruvian government policies were largely reflected in the demands of congressional leaders to the U.S. and Peruvian governments during the aid debate.

Also in the second half of 1991, our attention was riveted on Haiti, with the bloody September 30 coup against the Aristide government. On November 1, in conjunction with the National Coalition for Haitian Refugees (NCHR) and Caribbean Rights, we issued a report evaluating the Aristide government's human rights record. The report, timed to address growing controversy over human rights in Haiti under President Aristide, noted several positive steps taken by the Aristide government, but also contained criticism of President Aristide's tolerance and occasional encouragement of mob violence. Noting the important human rights violation inherent in overthrowing an elected government and the horrendous human rights record of the successor military regime, the report strongly supported the collective action taken to restore the Aristide government to power. In early December, Americas Watch

participated in a mission to Haiti with the NCHR to document the widespread and continuing abuses of the military regime. A preliminary report of the findings was released in late December.

Americas Watch has also been outspoken in challenging the Bush Administration's efforts to return Haitians by force to their country. These efforts lack adequate screening mechanisms to ensure that refugees are not returned to face political persecution. Nor is it possible for the U.S. government to obtain meaningful guarantees against persecution from the brutal and lawless military regime in Port-au-Prince.

One new area of research in 1991 has been violations committed by federal agents, particularly the U.S. Immigration and Naturalization Service border patrols, against aliens crossing the U.S. border from Mexico. A report on the research will be released in early 1992.

We have intensified our efforts to cover Brazil, with its vast and complex human rights problems and dizzying statistics of violence. Our work on Brazil in 1991 included publication of two full-length reports: *Rural Violence in Brazil* and *Criminal Injustice: Violence Against Women in Brazil*, the latter released jointly with the Women's Rights Project of Human Rights Watch. Americas Watch also issued a newsletter, "The Search for Brazil's Disappeared: The Mass Grave at Dom Bosco Cemetery," published jointly with Physicians for Human Rights and the Committee on Scientific Freedom and Responsibility of the American Association for the Advancement of Science.

A project begun in 1990 to increase cooperation with Physicians for Human Rights continued in 1991. The two organizations worked together in researching and producing the Brazil newsletter as well as in jointly sponsoring exhumations of clandestine cemeteries in Guatemala and the publication of a joint report, *Guatemala: Getting Away with Murder*.

In November, our publishing project with Yale University Press produced a book by Americas Watch, *El Salvador's Decade of Terror: Human Rights Since the Assassination of Archbishop Romero*. Further books are under production on Peru and Mexico.

Americas Watch continued to devote attention to regional mechanisms for human rights protection established by the Organization of American States. To that end, together with several prominent human rights organizations in Latin America, we helped to establish an independent center for litigation in the OAS Inter-American Commission on Human Rights and the OAS Inter-American Court of Human Rights. The newly formed Center for Justice and International Law (CEJIL), headed by Chilean attorney José Miguel Vivanco, shares offices with

Americas Watch and joins us in handling dozens of cases before the Commission, as well as several before the Court.

In 1991, Americas Watch and CEJIL, working through the Inter-American Commission, successfully won an injunction from the Inter-American Court ordering the government of Guatemala to protect endangered human rights activists. Two cases against the government of Peru, handled jointly by the two groups in partnership with Peruvian human rights organizations, are now pending before the Court as well.

ARGENTINA

Human Rights Developments

Democracy in Argentina continued to be consolidated in 1991 as congressional and provincial elections were held in September and October, producing majorities for the ruling *Justicialista* (Peronist) Party of President Carlos Menem. Yet, violent human rights abuses remained entrenched in such institutions as the police and the prison service. To date, the government has not addressed these problems in a serious manner.

On April 19, Walter Bulacio, a high school student, died while in custody of the police. His family charged that his death resulted from torture by the police. The police claim that he died of a pre-existing condition, but fail to explain how such a condition would lead to his death without other serious physical mistreatment. His death refocused public attention on the issue of police brutality and the arbitrary arrest of teenagers at night. Bulacio and approximately thirty other youths were detained outside a rock concert, under an Argentine law that permits the police to hold anyone for up to twenty-four hours for identification purposes. Police kicked and beat several of the prisoners, including Bulacio, who was hospitalized the next day and died a short time later.

Groups of students protested his death in public demonstrations and called for a complete investigation. In response, the government sought repeal of police regulations known as "edicts," which permit the chief of police to impose periods of detention of up to thirty days without seeking

judicial approval; an appeal may be made to the judiciary, but only in the twenty-four hours following notice of the police decision. The police edicts provide a legal cloak for detentions made without warrant or probable cause. In addition to the "edicts," the police dictate their own internal regulations in the form of "memoranda." In the case of minors arrested for identification purposes, the law stipulates that the police must immediately notify a judge and the minor's parents of the arrest. In practice, however, the police have been guided by Memorandum No. 40, which stipulates that they may hold minors for up to forty-eight hours without proper notification.

In Congress a proposal was presented to reduce from twenty-four to ten the number of hours that the police could detain citizens without the intervention of a judge. The law was vetoed by President Menem, but Congress eventually overrode the veto. Because of the public outcry over the Bulacio case in particular and the detention of minors in general, the police were forced to scrap Memorandum No. 40. In addition to these legislative efforts, there has been a judicial challenge to the powers given to the police by the edicts. Unfortunately, the Supreme Court in October upheld their constitutionality.

The September 1990 arrest and subsequent disappearance of Andrés Alberto Núñez has challenged the judiciary's will to investigate and punish abuses by the police. Witnesses affirm that Núñez was detained by the Investigative Brigade of La Plata, Buenos Aires, and that fellow prisoners heard his cries of pain inside the police precinct. While police originally denied that Núñez had been brought to the brigade, his name was discovered in the precinct's register. Nonetheless, the judge conducting the investigation has been less than energetic, and prosecuting lawyers doubt that the perpetrators will be held accountable for the crime.

The government's response to such episodes has been at best inconsistent, and has lacked the forcefulness that the problems of torture and arbitrary arrest deserve. Vice President Eduardo Duhalde, elected governor of the province of Buenos Aires on September 8, reaffirmed after the election a so-called hard line toward criminals — a stance also adopted previously by other high-ranking officials, including President Menem himself. The hard line has included praise by Duhalde for Luis Alberto Patti, a police officer who has been credibly charged with torturing prisoners with an electric prod. It has even been rumored in the press that Duhalde may name Patti chief of police in the province of Buenos Aires. Patti was released from jail when he successfully petitioned

for the removal of a judge who had managed to obtain a medical examiner's report that confirmed the use of electric shock on prisoners. Despite an appellate court's order to reopen the investigation, the new judge, Raúl Casal, has blocked further action. Meanwhile, with the help of Menem and Duhalde, Patti is enjoying his new image as a political celebrity.

Patti's high standing with the government is all the more disappointing in light of his help in covering up the 1990 rape and murder of seventeen-year-old María Soledad Morales, in the northern province of Catamarca. All of the principal suspects were related to members of the province's political elite. Initial attempts at cover-up were thwarted by an impressive succession of popular demonstrations, organized by Soledad's teachers and schoolmates, which brought down the autocratic provincial government of Ramón Saadi. The sixth judge to investigate the case, José Luis Ventimiglia, who was assigned by the federal government, has virtually solved the crime, implicating the chief of police and perhaps the governor himself in the cover-up. Patti, assigned by President Menem as the special investigator, was eventually forced to resign after clashing with Ventimiglia and making statements to the press insisting that the prime suspect was the girl's boyfriend.

The failure to investigate and punish police abuses was underscored by a study carried out by Alicia Pierini, the new human rights director in the Ministry of Interior. She diligently followed up on 678 reported cases of physical abuse of prisoners in police custody in the capital city of Buenos Aires between 1984 and 1986. Twenty-three of the thirty-three courts in the city responded to her request for information, and reported that 267 cases involved wounds confirmed by a medical examiner. Of these cases, ten were a result of electric shock. Despite the disturbingly high incidence of abuse, not a single police officer or other security agent had been convicted. The Pierini initiative reflects the concern over human rights violations shown by some sectors of the government — also including the Justice Ministry — but at the same time highlights the problem of official impunity.

The penitentiary system has been a breeding ground for abuse. The July death of twelve of the forty inmates in Federal Jail Number 13 in Santa Rosa, La Pampa caused alarm and requests for further investigations by the human rights division. A prison uprising to protest mistreatment resulted in the outbreak of a fire and the subsequent loss of life. The two prisoners involved in the uprising who survived the tragedy were promptly transferred to a distant jail, fueling suspicion of

misconduct by prison authorities. Because the judge handling the case was the same magistrate who should have intervened in the negotiations with prisoners before the uprising and reportedly did not do so, the Office of the General Prosecutor (*Fiscalía de la Nación*) has sent two federal prosecutors to La Pampa in an attempt to guarantee a thorough investigation. The prosecutors have pressed charges against the entire prison staff.

Americas Watch recognizes and applauds the role of the government in this episode, and believes that similar action is warranted to combat torture in police precincts, as well as the arbitrary arrest of youths and the shooting of criminal suspects by the police. In Buenos Aires and its suburbs, the police frequently kill common-crime suspects, and routinely label such episodes "confrontations." However, further investigation of some of these cases suggests a pattern of "shoot-to-kill" behavior directed against young men in poor neighborhoods, and against men with a police record who are considered "beyond redemption" by the police.

The issue of compensation for political prisoners held without trial during the state of siege under the military regime (known as PEN detainees) was partially resolved in September. In January, the Menem government issued Decree 70/91 to settle a complaint brought by human rights lawyers from Córdoba before the Organization of American States (OAS) Inter-American Commission of Human Rights. According to the Argentine government's director for human rights, the decree allows for payment of damages to approximately 140 former political prisoners, all of whom had filed suit against the state before the statute of limitations expired. The form of payment remains to be determined under the August Consolidation of Public Debt Law (No. 27.204), but may be in government bonds.

The 140 parties to the suit represent a small percentage of the total PEN prisoners held in administrative detention at different times between 1974 and 1983, estimated by the human rights director to be approximately 5,500 and by Americas Watch to be closer to 8,000. In November 1991, Congress passed legislation granting a similar compensation package to all former PEN prisoners, whether or not they had sued before the statute of limitations lapsed. Americas Watch believes that a significant step has been made to provide redress to many victims of arbitrary arrest during the military dictatorship. We urge the government to find ways to institute compensation to the military's other victims, particularly the families of the "disappeared."

A continuing concern of Americas Watch has been the tendency of the Menem government to compromise the independence of the judiciary. In 1990, President Menem orchestrated the expansion of the Supreme Court from five to nine judges as a way of increasing his political control. With a similar lack of respect for the balance of powers guaranteed by the Argentine Constitution, President Menem in February fired, or "decreed the resignation" of, Ricardo Molinas, head of an independent office that investigates and prosecutes wrongdoing by public officials, the *Fiscalia Nacional de Investigaciones Administrativas*. Molinas at the time was investigating charges of corruption within the government and had called one of the government's top advisors to testify. The advisor refused and eventually was forced to resign, yet President Menem sided with his advisor. The excuse given by President Menem for Molinas's dismissal was a dispute between Molinas and his four assistant prosecutors, who wanted to investigate allegations of wrongdoing by Molinas's son and private secretary. Protest from opposition members of Congress, who pointed out that these special prosecutors can be removed only through congressional impeachment, was ignored by the executive. In mid-1991, the Supreme Court rejected Molinas's charge that his dismissal had been unconstitutional. The majority in the telling five-to-three vote was composed of Menem appointees. In October, the Supreme Court upheld the constitutionality of an administrative decision to deny incorporation (*personeria juridica*) to the Argentine Homosexual Community, on the grounds that the promotion of homosexual behavior (which the association insists is not among its aims) is contrary to the country's traditions. The majority in the six-to-two vote was entirely composed of Menem appointees. In New York in November, Menem urged the association to apply again for incorporation, and promised a favorable response.

In a similar effort to stifle independent action within the judiciary, three federal prosecutors, all known for resisting submission to the executive branch's political will, are under administrative investigation by the new attorney general. One of those being investigated is Luis Moreno Ocampo, the assistant prosecutor in the trial of the former military commanders for ordering widespread murder, disappearance and torture and the prosecutor in the ongoing trial of rebel army officers, known as the *Carapintadas*, or Black-Faced Ones, after their manner of disguising their faces in the course of the December 1990 rebellion.

In the area of press freedom, the newspaper *Página 12* has suffered unrestrained verbal attacks from the government, particularly from

President Menem, which go well beyond legitimate criticism. The paper was responsible for making public the scandal that linked Menem's in-laws to the laundering of drug money, and for uncovering several corruption scandals that led to the resignation of top Menem advisors. The president has off-handedly charged the paper with being financed by drug money, and has called the paper's leading investigative reporter, Horacio Verbitsky, a "criminal journalist." Verbitsky described these attacks as "an abuse of power and intimidation," since the president enjoys legal privileges protecting him from slander suits unless he has been impeached. The verbal attacks have created an atmosphere conducive to more violent assaults. The paper's editor is often threatened, and in February a bomb exploded in *Página 12*'s offices. In December, the government canceled all official advertisement contracts with *Página 12*, in a move that threatened the newspaper's economic survival. This is the first overt act of censorship in the years of democracy in Argentina, and it comes on the heels of a series of stories on the sale of milk unsuitable for human consumption by a company with ties to one of Menem's two private secretaries. A few days later, in the face of mounting public outcry, the government reversed itself.

In May, motion picture director Fernando "Pino" Solanas was shot six times in the legs by two men disguised as clowns. Solanas had spoken publicly against Menem, calling him a traitor to Peronism, and had accused the government of corruption in the sale of a large government property that had been earmarked to become an arts center. The president's decision to sue Solanas for contempt (*desacato*) gave rise to alarm among human rights organizations, who feared a link between the suit and the shooting. Two former intelligence agents have been arrested and charged with the shooting.

In April, vandals damaged 110 tombs in a Jewish cemetery in Berazategui, approximately twenty miles south of Buenos Aires. In this case as well, despite numerous death threats received by the investigating judge, two former intelligence agents who are members of the very small Argentine Nazi Party were detained and charged with the crime.

Judges of the Federal Court of Appeals were threatened throughout the trial of the *Carapintadas*. In one instance, the chief justice of the court received at his office a written death threat in a box containing a human skull. Members of the press speculated at the time that the skull might have been taken from the skeletons stolen from the Jewish cemetery.

In November, investigators discovered a kidnapping ring whose members were high-ranking Federal Police officers, intelligence agents,

and at least one army major linked to the *Carapintadas*. As of mid-December, twelve had been arrested. Most of the defendants were former members of the "task forces" responsible for disappearances, torture and executions by the army during the "dirty war" against political opponents in the late 1970s. In fact, it was reported that the kidnapping-for-ransom began in that period as a fully authorized extension of the struggle against what was considered "economic subversion." The kidnappers had something else in common: most of them had faced charges in the mid-1980s for their role in the "dirty war," but their cases were dismissed by virtue of the *Punto Final* and Due Obedience laws enacted in 1986 and 1987 to limit such prosecution to high-ranking military leaders. Their resulting ability to remain in the force has again brought home the folly of those laws and of the presidential pardons issued by Menem in 1989 and 1990, which blocked all further prosecutions and released all other perpetrators of "dirty war" crimes. However, to the credit of the Menem government, the investigation into this "super-gang" has been vigorous. The Minister of Interior has promised an in-depth probe of the Federal Police, and predicted that five hundred members of the police force will be dismissed.

Of special concern to Americas Watch is the lack of any serious investigation into the apparent murder of members of an armed group that raided the military quarters of La Tablada, in suburban Buenos Aires, in January 1989. There is serious circumstantial evidence to suggest that at least four of the attackers were killed by the army after they surrendered. Survivors of the attack are serving stiff sentences imposed in 1989; their appeal on due process grounds is still pending before the Supreme Court.

The Right to Monitor

Human rights activists and judges continue to be periodically threatened in Argentina. Even the director of the government's Human Rights Office admits to regular harassment. Hebe de Bonafini, the president of the Mothers of Plaza de Mayo, an organization of relatives of those who disappeared under the military regime, reported two break-ins in the organization's offices and the theft of valuable documentation. She also has reported numerous death threats. She has been sued by President Menem for contempt for calling him "scum" or "garbage" in statements to the Spanish press.

In the ongoing research that Americas Watch conducts on Argentina, we have received serious responses and a high degree to cooperation from Minister of Justice León Arslanian, and from the human rights directors at the Ministries of Foreign Relations, Emilse Regazzoli, and Interior, Alicia Pierini. On the other hand, our efforts to obtain valuable statistical information met with a complete lack of cooperation from the Federal Police and from the Police of the Province of Buenos Aires. At the federal level, Supreme Court Justice Enrique Petracchi has made available to Americas Watch copies of important judicial decisions.

U.S. Policy

The Bush Administration has been a strong supporter of the Menem government, largely in response to economic reforms launched in Argentina. As in previous years, human rights has been notably absent from the U.S. diplomatic agenda, although U.S. Ambassador Terence Todman has expressed concern over corruption and the laundering of drug money in Argentina. Even though the State Department's *Country Reports on Human Rights Practices for 1990* notes serious violations in Argentina such as disappearances and torture, which occurred in 1991, the U.S. Embassy made no public statements expressing concern over these abuses.

In fiscal year 1991, Argentina received \$150,000 for military training, \$3.5 million in military aid and \$13 million in government-to-government military sales. An additional \$621,000 in police aid for counter-narcotics purposes was also granted.

The State Department indicated that the military training would be used to "depoliticize and professionalize the armed forces." The State Department reported that the majority of the \$3.5 million in military aid would be used for spare parts for helicopters and transport aircraft. A State Department official also mentioned that the Argentine army might serve a "support role" in assisting law enforcement authorities in counter-narcotics assistance.

Beginning in April 1991, the Argentine Air Force and Border Police, in conjunction with the United States, began aerial surveillance of suspected coca plantations and clandestine landing fields. This unexpected move, made after consultation with high U.S. Embassy officials, was launched in the midst of a scandal involving the laundering of drug money by close aides to President Menem.

Argentine human rights activists have expressed serious concern over what they see as the U.S. government's legitimization of the Argentine military. While the Argentine military was ostracized following the "Dirty War" conducted by the military regime, it is slowly regaining respect abroad. This renewed stature is inappropriate given the military's role in a series of rebellions that halted the process of bringing to justice those responsible for the Dirty War. Analysts in a position to know have told Americas Watch that the Argentine police force is doing an adequate job of drug interdiction and that the military's involvement in the drug war is unnecessary and undesirable. As Argentine Defense Minister Antonio Erman Gonzalez noted in April, "it is not the role of the armed forces to participate in the antidrug fight."² It is feared that entry of the armed forces, which are untrained in constitutional protections due criminal suspects, will lead to an upsurge of human rights violations.

The Work of Americas Watch

In 1991, Americas Watch continued to monitor human rights conditions in Argentina through the work of a representative based in Buenos Aires. Periodic meetings were held with the director of human rights in the Ministry of Interior and with the human rights ambassador in the Foreign Ministry, both to express concern over the issues described above and to learn of government actions designed to remedy or prevent further abuses.

In February, an Americas Watch staff member visited Buenos Aires and gathered information which was later published in the updated version of our 1987 report, *Truth and Partial Justice in Argentina*. The new version recounts the final stage of the process by which the historic prosecution of past human rights violations came to an end. That final stage took the form of two pardons, bestowed by the Menem government, for military leaders convicted and sentenced to prison for human rights violations or facing prosecution for such abuses. The report criticizes the amnesty and reiterates the long-standing position of Americas Watch that victims of human rights abuse have a right to seek redress in court for the crimes committed against them. In September, a

² From Telam, the official news agency, April 10, 1991, as reported in Federal Broadcast Information Service, April 11, 1991.

Spanish-language version of the report was published and circulated in Argentina, with the support of the Center for Legal and Social Studies (CELS).

Since the release of police officer Patti in November 1990, Americas Watch has given special attention to the issue of police abuse. In July, Americas Watch sent a mission of specialists in police killings to spend two weeks in Argentina interviewing government officials and gathering information. A report on that mission was published on December 23.

Americas Watch has also been interested in the methods used by the medical examiner in the province of Buenos Aires to confirm the use of electric shock on prisoners. A series of meetings were held with forensic authorities to obtain statistics on the use and results of these tests, referred to as *síndrome electro-específico*. Unfortunately, the Supreme Court of the Province of Buenos Aires advised Americas Watch that such information could not be provided due to "a lack of staff." Americas Watch protested that decision and resubmitted the request for statistics on the use and results of this test.

Americas Watch has also pursued cases involving Argentina before the OAS Inter-American Commission on Human Rights (IACHR). In cooperation with CELS and other local groups, we have pressed several cases challenging the *Punto Final* and Due Obedience laws — both restrict prosecution of those in the military who are responsible for the abuses of the "dirty war" — as well as the Menem pardons. The cases contend that these acts are inconsistent with Argentina's obligations to prosecute gross abuses under the American Convention on Human Rights. After a drawn-out process, the IACHR in October reached a decision on these laws and decrees, as well as on the *Ley de Caducidad*, enacted to a similar effect in Uruguay. The decision has been submitted to both governments for comment, but as yet the complainants have not been given notice of what appears to be a resolution favorable to their position. Public disclosure of the decision is expected in early 1992.

BRAZIL

Human Rights Developments

More than a year and a half since the election of President Fernando Collor de Mello, Brazil's first directly elected president in twenty-nine years, human rights violations in Brazil remain a serious concern. As in previous years, Brazil's rural activists faced unchecked violence and extrajudicial execution by powerful economic interests, and urban criminal suspects faced similar treatment at the hands of the police. Forced labor continued to be used in rural Brazil, prison conditions remained substandard, and violence against women met substantial indifference by the criminal justice system. The atmosphere of lawlessness spread to the general public, which increasingly took the law into its own hands to lynch suspected criminals.

Brazil's ongoing economic crisis, spurred by spiraling unemployment, unequal land distribution and large-scale migration from rural to urban areas, has produced a high rate of violent crime in Brazil's cities. All too often, the police have responded with violence, including torture, extrajudicial executions of suspected criminals and homeless children, and a failure to investigate and prosecute so-called "extermination teams," or *justiceiros*, often composed of retired or off-duty police officers, which also commit extrajudicial executions.

Statistics on violent death, whether attributed to extermination teams or the police force, are overwhelming. According to a report prepared by the Rio de Janeiro secretary for public security, Dr. Nilo Batista, death squads in the Baixada Fluminense slum of metropolitan Rio de Janeiro were responsible for 1,230 killings between December 1990 and May 1991.³ In São Paulo, the state government requested the advice of Amnesty International in an attempt to curb violence by military police, which caused the deaths of 585 people in 1990, and 560 in the first eight months of 1991 (or a 1991 average of 2.33 murders a day and seventy

³ "Death Squad Killings in Rio de Janeiro Detailed," *Folha de São Paulo*, June 26, 1991, as reported in Federal Broadcast Information Service (FBIS), July 2, 1991.

deaths a month).⁴

In the state of Espírito Santo, a commission of congressmen, mayors and union representatives reported that over one hundred people "linked to criminal activities" were killed in 1990 by an "extermination group" calling itself "Operation Death Penalty." (There is no death penalty under Brazilian law.) The Brazilian newspaper *O Globo* reported that the death squad is made up of policemen and operates with virtual impunity. According to the newspaper, the chair of the state police association said that it was not possible to confirm the participation of any policemen in the death squad because no investigation had been carried out into any of the killings.⁵

Among those killed by death squads and by uniformed police are children who live or work on the streets of Brazil's major cities. According to a report released in 1991 by three Brazilian human rights and social research organizations, at least 2,288 street children were killed in sixteen states between 1984 and 1989.⁶ Another study, quoting statistics from the Federal Police Department, reported that 4,611 children between the ages of five and seventeen were victims of violence between 1988 and 1990, with 2,150 children killed in the state of São Paulo alone.⁷ More recently, statistics presented to a congressional commission investigating violence against children showed that 411 children were murdered during the first six months of 1991, mostly in the cities of São Paulo, Rio de Janeiro and Recife. According to the national coordinator of the National Movement for Street Children (MNMMR), an average of three children

⁴ "Amnesty International Assistance Sought," Madrid EFE, September 28, 1991, as reported in FBIS, September 30, 1991.

⁵ "Operation Death Penalty' Reportedly Kills 100," Madrid EFE, March 8, 1991, as reported in FBIS, March 12, 1991.

⁶ Movimento Nacional de Meninos e Meninas da Rua (MNMMR), Instituto Brasileiro de Análises Sociais e Econômicas (IBASE), and Núcleo de Estudos da Violência da Universidade de São Paulo (NEV-USP), "Vidas em Risco: Assassinatos de Crianças e Adolescentes no Brasil," Rio de Janeiro, 1991.

⁷ Vera Saavedra Durão, "Estado de São Paulo é o líder em mortes violentas de crianças," *Gazeta Mercantil*, October 14, 1991; Inter Press Service, "Brazil: Over 400 Street Children Murdered This Year," June 18, 1991.

a day die in Brazil due to violence.⁸

This horrendous slaughter is in part the result of death squads or extermination teams that, according to local human rights organizations and media reports, in some cases have been financed by local business people eager to keep their streets "clean" and to lower the rate of crime. In many cases, these death squads have also been closely linked to the police, who either allow them to operate with impunity, or actively participate in their operations. Clashes between groups of drug traffickers and others involved in organized crime also account for a significant portion of the killings.

The majority of the victims are between the ages of seventeen and twenty-four, and many are younger — often minors who have been abandoned by their families. In the states of São Paulo and Rio de Janeiro, serious efforts are underway to protect these minors in particular. In Rio, the vice governor has established a hotline for citizens to call to denounce groups of hired gunmen and police engaged in "extermination" activities. Between April, when the line was installed, and November, thirty-three civilians and twenty-three military police have been arrested and charged with participation in the killings as a result of evidence gathered through the hotline. While in São Paulo the killings are reportedly increasing, in the state of Rio the number of minors murdered dropped from 450 in 1990 to what experts believe will be about 300 by the end of 1991.

Police participation in public lynchings caught national attention in Brazil when television stations broadcast an amateur videotape of the killing of three alleged criminals in the town of Matupá, in Mato Grosso, in November 1990. The videotape, which was delivered to the minister of justice in late January 1991, showed the military police in Matupá arresting three criminal suspects and handing them over to a crowd of enraged local citizens, who poured gasoline on them and burned them alive.⁹ The videotape received widespread coverage, and a special commission was appointed by the minister of justice to investigate the incident. Following the investigation, eighteen people were charged with

⁸ "Commission Told Number of Children Murdered," Rede Globo Television, June 18, 1991, as reported in FBIS, June 19, 1991.

⁹ "A morte no fogo: Em Matupá, Mato Grosso, três assaltantes apanham de uma multidão e são queimados vivos," *Veja*, February 6, 1991.

involvement in the crime and ten of these were held in preventive detention.¹⁰ However, other less publicized lynchings rarely yield prosecution of those involved, so the perception remains that one can commit such lynchings with impunity. According to police statistics, 313 lynchings were reported in the state of Bahia in the past three years, including thirty-seven during the first four months of 1991.¹¹

The Brazilian government, and President Collor personally, have repeatedly pledged to take steps to halt the killings, particularly of children. On April 5, President Collor reportedly expressed his disgust with the killing of children and announced the formation of a special National Plan to Fight Violence Against Children and Adolescents. The plan, subject to approval by Congress, would establish the National Council of Children and Adolescents' Rights, which would investigate the causes of violence and propose solutions.¹² In the view of Americas Watch, an immediate and effective solution would be to end the impunity for death-squad members, investigate all killings, and vigorously prosecute any person indicted for such extrajudicial executions, with particular attention to members of the police force.

Of equal and persistent concern are ongoing assassinations and intimidation in rural Brazil, and the lack of an effective and consistent official response. This violence is usually the result of conflict over land ownership, and is most often directed at rural squatters (*posseiros*), leaders of rural unions, indigenous people, and lawyers, clergy and activists who support the rural poor. In reaction to the unequal distribution of land in Brazil, with 1.88 percent of the farms occupying 54 percent of the land while as many as seven million peasants have no land at all, rural activists and their supporters have attempted to pressure the government to implement a comprehensive land-reform program by squatting or homesteading on unused land. These actions are often met by violence on the part of the police and private gunmen (*pistoleiros*) hired by large

¹⁰ "Juiz decreta prisão de 10 pela chacina de Matupá," *O Estado de São Paulo*, April 25, 1991.

¹¹ Sam Dillon, "Lynch-mob violence mounting in Brazil," *The Miami Herald*, April 21, 1991.

¹² "Government Launches Plan to Protect Children," *O Globo*, April 5, 1991, as reported in FBIS, April 9, 1991.

landowners. Violence sometimes takes the form of assassination of rural union leaders and their supporters. Other times it is the result of excessive force used against squatters who are defending themselves from eviction without court order, which is illegal, or eviction on the basis of a court order issued without notice to the settlers, which is permissible under Brazilian law.

The assassination of rural leaders was brought to international attention in late 1990 by the trial and conviction of the murderers of the rubber tapper and rural unionist Francisco Alves Mendes Filho, better known as Chico Mendes. In that case, the triggerman, Darly Alves da Silva, and the "intellectual author" of the crime, his father Darci Alves Pereira, were apprehended and sentenced to lengthy jail terms. More often, rural assassinations do not attract international attention and are met with a wholly inadequate official response.

On September 17, Gumerindo Rodrigues, one of Chico Mendes's closest collaborators in the National Rubber Tappers Council and the Xapuri Rural Workers Union, barely survived an assassination attempt; he received two gunshot wounds and was seriously injured. Due to his work as an adviser to the rubber tappers' union, Rodrigues had received repeated death threats, and prior to the assassination attempt Americas Watch had called for his protection. Two other leaders of the rubber tappers in the state of Acre, Antonio Luis Macedo and Pedro Ramos de Souza, were also attacked in 1991.¹³

In February 1991, shortly after the publication of an Americas Watch report, *Rural Violence in Brazil*, local and international attention was focused on the assassination of another rural activist, Expedito Ribeiro de Souza, in the violence-plagued town of Rio Maria in the southern part of the state of Pará. Expedito Ribeiro de Souza was the president of the Rio Maria Rural Worker's Union (STR) and a founding member of the local Brazilian Communist Party (PCB). Because of the STR's support for *posseiros* involved in several ongoing land disputes in the area, Ribeiro de Souza had been repeatedly threatened with death.

The remote town of Rio Maria has long been the site of protracted violence, and an Americas Watch mission to the area in 1990 revealed a pattern of inaction by the local police which allowed gunmen to operate freely. In April 1990, a local member of the PCB, Bras Antonio de

¹³ Inter Press Service, "Brazil: Violence Continues Unabated in Chico Mendes Country," September 23, 1991.

Oliveira, and his assistant, Ronan Rafael Ventura, were kidnapped and killed by men driving a grey Volkswagen. Despite eyewitness testimony, the local police chief's investigation into the killings brought no results. Three weeks after these killings, three brothers — one of them a prominent activist with the local PCB and the treasurer of the STR — were kidnapped by people driving an identical car. The local police chief, after being alerted to the kidnapping by the brothers' family, failed to notify the police stationed at roadblocks. Two of the brothers were later killed while one, Orlando Canuto, was injured but managed to escape. Canuto revealed that the kidnappers had said Expedito Ribeiro de Souza and Carlos Cabral Pereira, Orlando Canuto's brother-in-law, were next on their list. The kidnapping of the Canuto brothers, coming on the heels of an inadequate investigation into the deaths of de Oliveira and Ventura, created such outrage that the Rio Maria police chief was dismissed by the state governor, and several suspects in the killings were arrested.

Unfortunately, persistent pleas to federal and state authorities to protect Expedito Ribeiro de Souza — including a letter to the government by Americas Watch in December 1990 — went unheeded. In April 1990, the local representative of the Pastoral Land Commission (CPT), a national human rights and rural advocacy organization sponsored by the National Council of Brazilian Bishops, met with the minister of justice and asked for police protection for Ribeiro de Souza, Carlos Cabral and others. However, when Ribeiro de Souza later went to the state capital to seek protection, the federal police said that they had an order to help him but did not have the officers to spare. Ribeiro de Souza eventually secured protection from the civil police, but even this guard left after several days in Rio Maria. At the time of his death, on February 2, 1991, Ribeiro de Souza was unprotected.

Unlike most cases of rural assassinations, a specially appointed federal police investigator apprehended José Serafim Sales, who confessed that he had been hired to murder Ribeiro de Souza. Several days later, a warrant was also issued for Jeronimo Alves de Amorim, a local landowner who was accused of hiring Sales to commit the murder. However, the case against the accused killers remains stalled. In addition, Carlos Cabral, who received death threats along with Ribeiro de Souza and later succeeded him as president of the local STR, was shot in the left thigh during an assassination attempt in Rio Maria on March 4, 1991. Despite this attempt and the long history of violence against the STR in Rio Maria, the Federal Police withdrew protection from Cabral and one

of his trade-union colleagues in October 1991, once again placing their lives at risk.¹⁴ In late November, police protection was reinstated.

Most killers of rural workers and activists enjoy almost total impunity. According to statistics compiled by the CPT, trials took place in only seventeen of the 1,566 murders of rural workers, Indians, lawyers, church workers and others linked to land conflict from 1964 to 1989, and only eight of these trials ended with convictions. The convictions tended to occur in the few cases that attracted special national or international attention. Between 1990 and 1991, the CPT estimates that 112 people associated with rural conflict over land were killed. Only two of these cases have ended with the conviction of the killer.

Another point of serious concern is the use of forced labor, usually on remote rural ranches in the northern and western frontier states. In these areas, some large landowners, taking advantage of Brazil's unemployment rate, promise well-paying jobs to lure rural workers to remote ranches, often hundreds of miles from their homes. Once on the ranches, workers are held against their will by threats and acts of violence, and are compelled to work and live in deplorable conditions. Workers are forced to use their paltry wages to pay for food, housing and transportation, frequently leaving them with little or no profit, and often in debt. Uncooperative workers are beaten, threatened with death, and sometimes killed by small private armies of hired gunmen.

Similar to the killings of rural leaders, those responsible for using forced labor enjoy virtual immunity from prosecution. The CPT has identified 1,559 cases of forced labor in 1990, with the majority occurring on eighteen ranches (or *fazendas*) located in the southern part of the state of Pará and the northern part of the state of Mato Grosso.¹⁵

In one case, on July 2, 1991, after several complaints, the military police traveled to the *fazenda* of Santo Antônio de Indaiá in the interior of Pará state and freed sixteen rural workers who had been held at the ranch against their will by armed gunmen.¹⁶ However, the gunmen had been forewarned of the impending raid and fled, so the police

¹⁴ Amnesty International Urgent Action, "Brazil: Carlos Cabral Pereira, Roberto Neto da Silva," October 8, 1991.

¹⁵ Abnor Gondim, "Senzala amazônica," *Veja*, July 24, 1991.

¹⁶ *Ibid.*

arrested only the *fazenda's* supervisor, or *gato*. An official investigation was launched by the federal police on July 4 into this and another case of forced labor at the nearby *fazenda* Santana do Indaiá. Statements were taken from the *gato*, a local labor contractor, and six of the workers. However, by October 1991, the investigators had failed to take statements from, let alone arrest, the owners of the two ranches, the overseer of the ranches, or the four gunmen, who the workers stated had repeatedly threatened them with death. The local delegate of the federal police stated that the investigation was stalled due to lack of funds.¹⁷

Americas Watch is also concerned by the Brazilian government's nonenforcement of laws against violence, particularly when the victims are women. In the most glaring example, on August 29, 1991, João Lopes was acquitted of having stabbed to death his unfaithful wife and her lover. Despite the premeditated nature of the crime, Lopes was found innocent of the double homicide on the grounds that he was acting in defense of his personal honor. This judgement was passed even though, on March 11, the Superior Tribunal of Justice — Brazil's highest court of law — had ruled, in the same case, that the honor defense has no basis in law. One prosecutor, referring to the interior of his state, estimated that the honor defense is successfully invoked eighty percent of the time.

In other ways as well, Americas Watch found that Brazilian courts generally treat defendants in wife-murder cases more leniently than others arrested for murder. The notion of "provocation by the victim" continues to result in unduly short prison terms for wife-murder, even in cases involving premeditation. In the 1989 wife-murder case of Anibal Maciel Abreu Silva, the court granted the defendant a severely reduced sentence even though there was ample evidence that the murder was deliberate and premeditated and there was no evidence to support the defense's claim of provocation by the victim.

The 1990 case of the murder of Daisy Carreiro by her husband Ricardo Simonetti initially fit this same pattern. Simonetti killed his wife after luring her to an apartment under false pretenses. He then claimed that he had committed the crime in a moment of violent emotion provoked by the victim. After national and international protest, Simonetti was charged with premeditated murder. The prosecution has yet to be completed.

¹⁷ Appeal by the Comissão Pastoral da Terra, October 8, 1991, Goiânia, Goiás, Brazil.

Americas Watch found that discriminatory treatment by the courts is not exclusive to crimes of wife-murder but extends to other acts of violence against women as well. Although reported rates of wife abuse and rape have steadily increased since 1985, female victims have little reason to expect that their abusers will ever be punished. Of over two thousand cases of violence other than homicide against women reported to a Rio police station in 1990, not a single one ended in punishment of the accused.

The terrible conditions of Brazil's prisons once again gained national and international attention when a fire killed twenty-four inmates in the Ary Franco penitentiary in the Agua Santa district of Rio de Janeiro. The fire was reportedly caused by an explosive bomb that was thrown into a crowded cell, and the prison's head of security and a guard were later arrested.¹⁸ Inmates claimed that the firebomb was thrown into the cell in retaliation for a foiled escape attempt discovered earlier that day. The Ary Franco penitentiary had previously been criticized by Americas Watch as an understaffed, overcrowded and particularly brutal prison.¹⁹

The Right to Monitor

Brazil officially allows human rights monitoring, and several local human rights organizations continue actively to monitor abuse against the urban and rural poor, suspected criminals and homeless children. In addition, Americas Watch and other international human rights organizations have freely conducted investigative missions.

In practice, local human rights activists — especially those monitoring rural violence and abuses against the urban poor — are often targets of intimidation and harassment. For example, of the 108 people which the CPT documented as having received death threats over land disputes, one of those receiving the most frequent and serious threats is Father Ricardo Rezende, a former coordinator of the CPT who lives in the violence-plagued town of Rio Maria, Pará. Father Rezende is currently under police protection.

¹⁸ Julia Preston, "2 Guards Held in Fire Killing 24 in Rio Jail: Chemical Bomb Blamed," *The Washington Post*, October 30, 1991.

¹⁹ Americas Watch, *Prison Conditions in Brazil*, April 1989, p. 22.

Human rights workers in urban areas have also suffered intimidation and, in one case, assassination. On August 13, 1991, lawyer Fausto Ribeiro da Silva Filho, who represented the urban homeless and was active with the Urban Squatters Movement, was murdered in São Miguel Paulista, a neighborhood in eastern São Paulo.²⁰ It was not known whether Ribeiro's death was specifically related to his work on behalf of the urban poor. In another case, Dr. Tania Maria Salles Moreira, the public prosecutor of the city of Duque de Caxias in the state of Rio de Janeiro and a campaigner for an end to impunity for urban "extermination groups," also received repeated telephone death threats.²¹

U.S. Policy

Despite strong and friendly relations with Brazil, the United States has consistently failed to use its considerable leverage to make public statements regarding Brazilian human rights violations. State Department officials in Washington assured Americas Watch that human rights concerns are brought up periodically on a private level, but could recall no public statements of concern.

Although direct U.S. aid to Brazil is small, the United States is Brazil's largest trading partner, investor and creditor. In June 1991, President Collor paid a high-profile visit to Washington, and in August, Vice President Dan Quayle visited Brasília. Upon President Collor's arrival in Washington on June 18, President Bush lauded him as "Latin America's most dynamic statesman," and stated:

The U.S.-Brazilian friendship has spanned nearly two centuries. Now an alliance built on fidelity — to democracy, healthy mutual respect, and firm collective will — [our] relationship has never been better. The most basic roots of our friendship lie in our dedication to democracy, our allegiance to the power of

²⁰ "Advogado dos sem-teto é morto em SP," *Folha de São Paulo*, August 15, 1991.

²¹ Amnesty International Urgent Action, "Brazil: Tania Maria Salles Moreira," Death Threats, February 26, 1991, UA 69/91.

individuals, and the rule of law.²²

During President Collor's visit, President Bush emphasized his enthusiasm for the Enterprise for the Americas Initiative, and announced that the United States would sign a trade and investment agreement with Brazil and its three partners in the planned Southern Cone Common Market: Argentina, Paraguay and Uruguay. Because of President Bush's stated admiration for Brazil's respect for the rule of law, the persistent problem of impunity for the perpetrators of serious violence was never publicly discussed.

Similarly, there was no public criticism of Brazil's human rights record during Vice President Quayle's visit to Brazil in August. Quayle, traveling with U.S. Commerce Secretary Robert Mosbacher and eight prominent U.S. businessmen, reportedly limited discussions to the issues of intellectual property rights, the possibility of increased U.S. investment in Brazil, and U.S. concern over Brazil's failure to negotiate a debt agreement with the International Monetary Fund. The absence of public statements on human rights was particularly disappointing because during other stops on his Latin American trip, Vice President Quayle criticized Cuba's human rights record and expressed his support for what at the time was progress in democratization in Haiti.²³

U.S. military aid to Brazil, which was suspended in 1977 following disputes over Brazil's human rights practices, recommenced in 1988, yet remains at a modest level. In fiscal year 1991, Brazil received \$150,000 for military education and training. Brazil also received \$2.5 million in police aid for counter-narcotics activities and training. The anti-narcotics assistance was designated for use in drug eradication, chemical control, and drug-awareness education programs. Anti-narcotics assistance was also used to purchase "fast boats" and other transport vehicles for drug interdiction.²⁴ In August, U.S. Assistant Secretary for International

²² As reported in the State Department's *Dispatch*, June 24, 1991.

²³ David S. Broder, "Quayle Sees 'Increased Opportunities' For U.S. Investment in Latin America," *The Washington Post*, August 11, 1991.

²⁴ Counter-narcotics assistance is expected to increase gradually over the next few years. The Bush Administration has requested \$3.5 million for fiscal year 1992 and will reportedly request \$4 million for 1993.

Narcotics Matters Melvyn Levitsky met in Brasília with high ranking Brazilian officials to discuss cooperation between the two nations on counter-narcotics activities.

The Work of Americas Watch

In February 1991, Americas Watch released *Rural Violence in Brazil*, which was the result of research in Brazil in June and July 1990. The report focused on violence in five states — Pará, Maranhão, Acre, Paraíba and Rio Grande do Sul — and concerned itself with the problem of impunity for those who assassinate and harass rural workers, unionists and their supporters. It also addressed the government's failure to enforce its own laws prohibiting forced labor. The report concluded that, despite the prosecution of those responsible for the Chico Mendes murder, impunity for the perpetrators of assassinations in rural Brazil continues to be the rule.

Americas Watch recommended that to remedy this situation the Brazilian government take steps to: alter the process by which settlers are evicted from their land, specifically increasing due process and trying to avoid the use of force; increase the priority, funding and staffing given to the investigation and prosecution of those accused of crimes of rural violence; and create a special commission, with paid staff, to investigate and prosecute cases of forced labor.

In August 1991, an Americas Watch representative traveled to Brazil to release the Portuguese version of *Rural Violence in Brazil*, at a meeting of the São Paulo section of the Brazilian Bar Association. The representative also traveled to the capital, Brasília, where he met with Minister of Justice Jarbas Passarinho and Foreign Minister Francisco Rezek. In Brasília, the rural violence report was presented to the public under the auspices of a highly respected citizen's organization, *Ação Pela Cidadania* (Action for Citizens). The Center for the Study of Violence of São Paulo University assisted Americas Watch with the publication and distribution of the Portuguese version of the rural violence report.

On March 13, 1991, in a joint project with Physicians for Human Rights and the Committee on Scientific Freedom and Responsibility of the American Association for the Advancement of Science (AAAS), Americas Watch released "The Search for Brazil's Disappeared: The Mass Grave at Dom Bosco Cemetery." The newsletter described the findings of an October 1990 mission to the municipality of Perus, on the outskirts of

São Paulo, where a team of Brazilian experts exhumed a mass grave at the Dom Bosco cemetery. By early December 1990, when the Brazilian authorities completed the exhumation of all 1,048 skeletons, human rights investigator had identified the names of six "disappeared" people who were buried in the mass grave. Americas Watch, the Physicians for Human Rights, and the AAAS urged the Brazilian government to investigate the fate of all individuals who disappeared during the years of military rule, and recommended specific steps to improve Brazil's medicolegal system.

The most recent report by Americas Watch on Brazil, *Criminal Injustice: Violence Against Women in Brazil*, was released by the Women's Rights Project of Human Rights Watch on October 16, 1991. The report was the result of an investigation into domestic violence in Brazil conducted in April 1991 by the Women's Rights Project. The report focused on the discriminatory treatment of crimes of violence against women, particularly in the home.

The Women's Rights Project recommended that the Brazilian government implement the law fully and fairly and uphold the right of equal protection for all citizens regardless of gender. It also urged the public denunciation of the legitimate defense of honor, which despite rulings to the contrary, continues to be used as an excuse for the murder of allegedly unfaithful wives. The report made a number of recommendations, including: specific steps to improve the documentation of violence against women; the expansion and full support for special women's police stations; improvements in the medical examination of victims of physical and sexual abuse; the reform of Brazil's Penal and Civil Code to implement fully Brazil's constitutional obligations and those it has under the Convention on the Elimination of All Forms of Discrimination Against Women; and the expansion of legal and social services to the female victims of violence.

In November 1991, an Americas Watch researcher conducted a four-week mission to Brazil to investigate cases of rural violence and forced labor. During the same period, another Americas Watch representative traveled to São Paulo and Rio de Janeiro to investigate the problem of urban violence, with special attention to the killings of street children.

CHILE

Human Rights Developments

The government of President Patricio Aylwin intended, in its second year, to put the issue of human rights "to rest" as a source of national conflict. In March 1990, the Aylwin coalition had taken office on a platform of commitment to human rights, and the president in particular had distinguished himself in his pronouncements on the issue. At the same time, the government faced the necessity of reducing civil-military tensions, living with the former dictator General Augusto Pinochet as the continuing commander of the army, and returning the society to a state of calm after the fear and divisions of military rule. During 1991 human rights did not disappear from national debate — indeed, both past abuses and new violations surfaced regularly in the press and in official statements — but the issue, from the government's point of view, was largely resolved.

The government's sense of resolution was due, in large part, to the report produced by the nine-member National Commission on Truth and Reconciliation, also called the Rettig Commission after its chairman, lawyer Raúl Rettig. The immense and detailed report, released on March 4 with a live televised speech by President Aylwin, was the product of a politically heterogeneous commission which for nine months had interviewed survivors throughout Chile and reviewed the substantial archives compiled by human rights organizations. The report reached conclusions about 2,279 cases of political execution and disappearance during the period of military rule from 1973 to 1990, and offered profiles of the two generations of secret police (DINA and CNI) that carried out the repressive policy. Acts of violence by armed opposition groups, when these led to death or physical injury, were among the cases examined. However, the vast majority of crimes exposed by the report, including systematic torture that led to death, were traceable to official forces — a combination of military and police intelligence units in the first year of military rule, and after that the security police composed of military and civilian agents. The report contained a chapter which quoted the victims' relatives on the subject of their long ostracism and suffering, and concluded with policy recommendations. Among these was the recommendation that research continue regarding the 641 cases on which

the commission had not been able to reach conclusions due to insufficient evidence.²⁵

The Rettig Commission had been given a mandate that was in certain ways limited. It was authorized to uncover the truth about executions and disappearances by state agents, and executions and physical injuries by armed opposition groups. But it was not empowered to examine cases of torture not causing death, in part because the incidence of torture was so widespread during so long a period that this research would have been interminable. It could not name perpetrators of abuse, even when these were well known, because it was felt that the commission should not usurp the authority of courts to determine responsibility. However, the commissioners attempted to give the clearest possible picture of the conditions under which crimes were committed, such that perpetrators' institutional identification is often included in the report, even if their names are not. Many of the forms of abuse typical of the Pinochet era — forced exile, invasion of the home, brutal suppression of public assemblies, erratic censorship — are mentioned in the opening section of the report but did not fit within the commission's mandate.

The report is a generous and dignified document which does not soften the edges of the events it describes while placing them in a coherent social and political framework. And as remarkable as the report itself was President Aylwin's manner of presenting it. In his March 4 speech to an anxious nation, the president offered his vision of the report's significance. He spoke of forgiveness and the entire society's burden:

[O]ne must begin by specifying who are the offended parties called upon to forgive and who are the offenders to be forgiven. I cannot forgive for another. Forgiveness is not imposed by decree. Forgiveness requires repentance on one hand, and generosity on the other.

²⁵ In addition to the 641 cases the commission could not resolve, it noted 508 on which it received information but which fell outside its mandate, and 448 in which information amounted to little more than a victim's name. "New" cases dating from the military period also continue to be denounced for the first time, though in small numbers.

When agents of the state were those who caused so much suffering, and the relevant organs of the state could not or did not know how to avoid it and punish it, nor was there the necessary social reaction to impede it, the state and the entire society are responsible, whether by action or omission. It is Chilean society that owes a debt to the victims of human rights violations.²⁶

In his capacity as representative of the society, the president then asked pardon of the victims and requested of "the Armed Forces and forces of order, and all who have had participation in the excesses committed, that they make gestures of recognition of the pain caused and cooperate in diminishing it."²⁷

Unfortunately, with few exceptions, the import of the president's speech was lost on the civilian right as well as the army, the honor of which Pinochet defended in a speech responding to the report. Neither the country's former ruler nor his former civilian followers shouldered their burden of responsibility. Indeed, as late as October 22, when German Chancellor Helmut Kohl fleetingly mentioned past abuses and reconciliation in a speech to the Chilean Congress, most rightist legislators walked out.

The Rettig Commission's report did have the effect of stimulating debate about the past and vindicating the reputations of the victims. Then, a mere three weeks after its publication, Senator Jaime Guzmán, a major rightist figure and General Pinochet's closest civilian advisor, was assassinated, and the nation's attention was refocused on terrorism. Proposals for reparation ceased to be newsworthy; a planned national campaign of local meetings to reflect on past abuses and reconciliation was shelved; victims' concerns became marginal once again.

Some reparatory suggestions have been followed. There is legislation pending on compensation for survivors. An institution may be created to follow up on unresolved cases, although a portion of the parliamentary right is seeking to weaken it. An ombudsman is to be appointed as citizens' protector against abuses of authority. And at the commission's recommendation, about 230 cases were transferred to the civilian courts, some for the first time and many after having been reopened because of

²⁶ Full text reprinted in *El Mercurio*, Santiago, March 5, 1991.

²⁷ *Ibid.*

the commission's new findings.

However, the prospects for those cases are not encouraging. Apart from the milestone represented by the commission's report, the impediments to truth and justice in cases of past abuse remained unchanged in Chile during 1991, with one sole exception. The commission's report delivered a large portion of the truth, to be sure, but the commission could not establish such crucial information as the perpetrators' identities and the whereabouts of missing bodies; such information may be possible to establish only in court. In all but one case, there was no advance toward the prosecution of military personnel, or even civilian members of the security police, for crimes of the past. A 1978 amnesty law, decreed by the military government to cover the period of September 1973 to March 1978, continues to be interpreted by the Supreme Court as precluding even the investigation into, and determination of responsibility for, human rights abuses during that time. Inquiry is thus barred into virtually all disappearances and the bulk of executions. Regarding abuses committed by military personnel after March 1978, the Supreme Court with great controversy awards jurisdiction to military courts as a matter of habit, and those courts in an equally routine fashion allow the investigations to lapse. Perpetrators of gross and multiple violations of human rights remain effectively above the law. Some, still on active military duty, retain positions of responsibility.

The possible exception to the rule of impunity is a case in which some progress has been made in 1991, due to a combination of sustained U.S. interest and special Chilean legislation. This is the landmark Letelier-Moffitt assassination case, always an exception in the nation's human rights history. Orlando Letelier, who had served President Salvador Allende as foreign minister, ambassador to the U.S. and defense minister, was living in exile in Washington, D.C. when, on September 21, 1976, assassins detonated a bomb placed under his car. Letelier and U.S. citizen Ronni Karpen Moffitt were killed, while her husband, Michael Moffitt, survived the blast. Because a U.S. grand jury in 1978 indicted three DINA officials and five Cuban exiles,²⁸ the case was explicitly

²⁸ Two of the DINA officials, those of lower rank, went to prison in the United States in 1978 and 1987. Three of the Cuban exiles were convicted of various degrees of involvement but the convictions were reversed on technicalities in 1980. The remaining two Cuban exiles were arrested in 1990 and 1991, and

exempted from the 1978 amnesty law, leaving open the legal option — unpursued by military courts — of prosecution in Chile. The Aylwin government succeeded in having jurisdiction transferred to civilian courts, and in July 1991, a member of the Supreme Court was selected by his peers to pursue the investigation. The justice in question, the court's junior member, was appointed by President Aylwin and is a jurist of considerable prestige. His research led him, in September, to indict DINA's former director, retired army General Manuel Contreras, and DINA's former operations director, active-duty Colonel Pedro Espinoza. The two are under arrest. On November 18, the Supreme Court upheld the indictment, allowing the case to move forward.

Though far from successfully concluded, the prosecution of the Letelier-Moffitt case is an example of how human rights cases can be pursued. DINA chief Contreras was widely regarded as untouchable until he was arrested, but civilian rule has survived his detention. By contrast, another case of international terrorism by DINA — the 1974 bombing assassination in Buenos Aires of retired General Carlos Prats, former army commander and Allende's defense minister before Letelier — is neither exempted from the amnesty nor in civilian-court jurisdiction, and its prospects for full investigation are dubious — principally, it seems, because the Argentine government has not made the case a bilateral issue as did the U.S. Congress and Justice Department with the Letelier-Moffitt killings.

The Chilean government's watchword regarding past abuses has been "reconciliation," which has translated into attempts to establish trust among the armed forces and police while recognizing the rights of victims. Efforts at reconciliation have been hampered by opposition from the right in Congress, which opposes leniency for persons imprisoned during the Pinochet era. Most remaining prisoners are charged with acts of political violence; Americas Watch is concerned in these cases about a lack of due process leading to their convictions. A package of legal reforms proposed by the Ministry of Justice was radically weakened by rightist legislators, with the result that security-related prisoners convicted by the military regime did not enjoy the clemency that the government had intended to offer them. Through presidential pardons, acquittals and other mechanisms, all but some seventy of the security prisoners inherited from the Pinochet era have been released, but the remaining

both have been sentenced to twelve years' imprisonment.

prisoners may remain in custody for as long as another year, given judicial delays.

Meanwhile, conservative politicians have insisted on a vigorous anti-terrorism campaign. Their concern reflects public insecurity over continuing violence — bombings, shootings and robberies — by extreme-left opposition groups. The April 1 assassination of Senator Guzmán heightened that concern. The government's legislative response to terrorism has been enlightened. Among other things, plea-bargaining has been introduced into Chilean law, for the purpose of more effectively seeking out terrorists. But the treatment of terrorism suspects in custody has provoked between three and four dozen legal complaints of torture since the new government took office, none of which has been resolved. In general, the complaints made in 1991 did not describe such extreme forms of mistreatment as those filed in 1990, but many complaints alleged violent arrest, psychological pressure, and deprivation of rest, food and water. In one case in 1991, treatment was so violent that the detainee's skull was damaged and his spine dislocated, as verified by a doctor; the detainee also alleged that he was subjected to a mock execution. When human rights groups have attempted to gain cooperation from law enforcement agencies in investigating these complaints, they have found the civil detective force (*Investigaciones*) helpful and prepared to conduct internal disciplinary inquiries, but the regular uniformed police intransigent. Typical of the difference between the forces is that the detective unit has provided its ascending officers with courses on detainees' rights, taught by human rights activists.

There can be no doubt that the Aylwin government has explored many avenues in its efforts to resolve the human rights legacy of military rule, and that the remaining obstacles to justice and respect for human rights are not entirely of its making. Inherited institutional constraints, such as General Pinochet's right to appoint a substantial minority in the Senate and numerous constitutional provisions securing a substantial role in governance for the military, limit the government's freedom of action, and the political opposition makes a virtue of blocking or diluting human rights initiatives. The necessary negotiations in parliament — what the government has dubbed "the politics of agreements" — often end with disappointment for human rights advocates, as in the case of the reforms to benefit held-over prisoners.

The Right to Monitor

The Aylwin government maintains close relations with human rights groups. The Justice Ministry and the human rights office of the Foreign Ministry, in particular, are well informed as to legal complaints and measures taken to protect detainees from abuse. Former human rights activists now hold seats in Congress and ministerial posts at various levels. Because of President Aylwin's concern for human rights during the dictatorship, relations between human rights organizations and the government are cordial, even when activists come away frustrated by the government's caution. The official policy is one of full respect for the work of human rights monitors.

Americas Watch is aware of only one attack on a person linked to human rights work in 1991, an attempted murder by a right-wing paramilitary group. On the night of April 5-6, in the central southern town of Parral, an assailant bombed lawyer Guillermo Ceroni's home and then fired through the window. Ceroni, who was attorney for the German government and Amnesty International in their case against the nearby closed Community Colonia Dignidad — a place long associated with DINA and human rights abuses — has been watched and followed. Police identified the assailant as a member of the self-styled "Group of Friends of Colonia Dignidad." Ceroni recognized him as one of the men who had shadowed him. The case is under adjudication.

U.S. Policy

Firmly supportive of the Aylwin government, the United States lifted restrictions on bilateral aid in November 1990. This was done precipitously, for the Letelier-Moffitt case had not yet passed out of military jurisdiction and thus a central condition for the resumption of aid had not been met. In March 1991, after Chilean military and civilian defense officials visited Washington, the Bush Administration proposed one million dollars in military aid for Chile — a small amount oriented toward the Air Force, the service most accepting of civilian rule. Americas Watch objected at the time to the lifting of aid restrictions in the absence of concrete progress in the Letelier-Moffitt case. However, the U.S. government has maintained an active interest in the progress of the Letelier-Moffitt case, although officials are careful to avoid any hint of interference in the Chilean legal process.

The United States also gave \$300,000 in fiscal year 1991 for the International Military Education and Training (IMET) program, and has proposed an additional one million dollars for IMET in fiscal year 1992. Given General Pinochet's continuing presence at the head of the armed forces and the sorry history of U.S. involvement with the Chilean military, Americas Watch urges caution in efforts to promote reform through military training.

The other aspect of U.S. policy related to human rights — trade benefits under the Generalized System of Preferences (GSP), which were suspended for the military regime's violation of labor rights — was normalized in February 1991. The renewal of GSP benefits, which was supported by Chile's labor movement, appears justified.

The Work of Americas Watch

Americas Watch monitored conditions in Chile during 1991 through the work of a representative based in Santiago. In July, Americas Watch published *Human Rights and the "Politics of Agreements": Chile During President Aylwin's First Year*, a comprehensive report on the changing human rights and political conditions, their historical context, and the limits on reform. The public presentation of the report in Santiago was widely covered in the Chilean press. In that report, Americas Watch took exception once again to impunity enjoyed by military violators of human rights.

The organization also sought to improve victims' chances of legal recourse. Americas Watch agreed to assist the Group of Relatives of Disappeared Detainees (AFDD) in taking a case to international legal fora, given the exhaustion of domestic legal remedies. That case, involving seventy disappearances carried out by the DINA in the mid 1970s, was presented to the Interamerican Commission for Human Rights in March 1991 by the Center for Justice and International Law, of which Americas Watch is a member.

COLOMBIA

Human Rights Developments

Despite encouraging institutional developments and welcome initiatives on human rights by the government of President César Gaviria, the rate of politically motivated murder in Colombia continued to be as high as in Peru, and both countries continued to register the highest number of such deaths in the Americas. Political killings accounted for about 3,500 deaths in 1991 — less than the 4,000 of 1989, but a slight increase over the 3,200 of 1990. These killings include murders committed by the guerrillas, the army, the police and paramilitary groups as well as combat-related casualties on both sides. As in 1990, an increasing proportion of these killings are categorized as murders for purposes of "social cleansing," in which the targets are prostitutes, drug addicts, beggars and petty criminals. These crimes are properly included in the list of political murders because they function as a form of social control and, for the most part, are committed by moonlighting police officers or shady death squads that enjoy police protection. Disappearances also continued at the rate of about two hundred per year.²⁹

Ten political deaths each day is an enormous amount for any country. Of course, the state is not responsible for some of these killings, and indeed is often the victim of those perpetrated by insurgents. But hundreds of these deaths are attributable to the armed and security forces of Colombia, and government agents participate in many others indirectly by lending aid and comfort to paramilitary groups that are directly responsible. In such cases, pervasive impunity remains the occasion for persistent violence. Efforts by prosecutors and some judges continue to be thwarted by a lack of cooperation from military and police authorities, and occasionally by more direct obstruction of justice.

One significant category of murders — those attributable to the Medellín drug cartel — decreased sharply in the second half of 1991, after the surrender of drug kingpin Pablo Escobar in June. This is an

²⁹ These grim statistics are part of a larger and equally alarming figure: the general murder rate in Colombia, amounting to about 25,000 violent deaths each year, is by far the highest in the hemisphere.

encouraging development, because Escobar and his accomplices commanded powerful armed groups that committed many murders: while enforcing drug-related operations, while fighting police and military efforts to apprehend the cartel leaders, and while supporting paramilitary violence against perceived leftists. A reduction in the frequency of such killings began in mid-1990, when "The Extraditables" — the name adopted by senior members of the Medellín cartel who feared extradition to the United States — announced a unilateral cease-fire, putting an end to a campaign that had claimed the lives of more than two hundred police officers in a four-month period in Medellín alone. Still, in the early part of 1991, the cartel continued to terrorize Colombia. On February 15, a remote-control explosive device placed at the Macarena bullfight ring in Medellín, where many police officers were in attendance, killed nineteen persons, nine of them police officers, and injured another sixty persons.

With major traffickers on the run in the first few months of 1991, the killings ordered by the cartel seemed to taper off. On the other hand, killings of other sorts increased in Medellín in the same period, probably because many gangs whose members previously were hired by the Extraditables were suddenly left to their own devices. This new violence, in turn, caused an increase in vigilante murders by self-styled "popular militias" that appeared in some of Medellín's poor neighborhoods. These two categories of violence have continued in that city even after the surrender of Pablo Escobar.

For their part, the two largest guerrilla groups, the Revolutionary Armed Forces of Colombia (FARC) and the National Liberation Army (ELN) launched an intense offensive in the beginning of 1991, attacking military and economic targets. In addition to killing combatants, the FARC and ELN murdered many civilian leaders in the countryside, accusing them of corruption or heading paramilitary groups. These assassinations, and the pattern of kidnappings for ransom that both groups commit, constitute serious breaches of the laws of war.

Paramilitary groups continue to be active in different parts of Colombia, although in 1991, as in 1990, they were not responsible for as many spectacular massacres as in 1988 and 1989. The decrees issued by then-President Virgilio Barco in 1989 have contributed greatly to delegitimizing the "self-defense" associations that often served as a

relatively legal facade for paramilitary organizations.³⁰ In addition, the campaign against the Medellín cartel placed some of these groups on the defensive, particularly those that enjoyed financial and logistical support from the cartel.

Some well-known paramilitary leaders in the Magdalena Medio region changed sides and cooperated with the government in tracking down Pablo Escobar, apparently in an effort to achieve legitimacy. After Escobar's surrender, the most notorious leaders of the Association of Cattlemen of the Magdalena Medio (ACDEGAM), one of the better known self-defense associations, were murdered in succession. This string of murders included among its victims an army colonel — Luis Bohórquez, commander of the Bárbula Battalion in Puerto Boyacá — who had been forced to retire in 1989 because of his connection to ACDEGAM. Sources from the security forces blamed Pablo Escobar for the murders of Colonel Bohórquez, as well as ACDEGAM chief Henry de Jesús Pérez and several relatives of Pérez, but no evidence was offered other than the motive of revenge. Both human rights activists and government observers told Americas Watch that they are more inclined to believe that the murders are the result of an internecine struggle for power within ACDEGAM. In any event, those responsible for the killings have not been identified.

Another paramilitary group that operates in the Magdalena Medio, "Los Masetos" (a name derived from a well known Colombian death squad), has continued to terrorize the peasant population south of Barrancabermeja, and to enjoy army tolerance if not support. One of its leaders, Isidro Carreño, was killed in 1991, apparently while trying to defuse a land mine.

Perhaps the most prominent of paramilitary leaders, Fidel Castaño, seems to have experienced a conversion. In an evident pitch for legitimacy, this fabulously rich landowner in Córdoba has distributed land to peasants and created a foundation to promote peace in his region. After former leaders of the Popular Liberation Army (EPL) guerrilla group joined the peace process and abandoned armed struggle, he contributed to their electoral campaign even though they had once been

³⁰ In amendments to internal security laws that date from 1968, President Barco in 1989 "suspended" the army's power to create civilian self-defense patrols and prohibited the military from arming such groups. The status of groups that previously had been established and armed was not addressed.

his sworn enemies in the northeastern region. Although Castaño was convicted *in absentia* on July 18, 1991 for his role in two massacres of banana workers in Urabá in 1988 and is sought in connection with several other massacres, he makes public appearances in his region and enjoys the protection of army officers on active duty there.

The Colombian army has continued an active counterinsurgency campaign in certain regions of the country where the FARC and ELN still operate. As in the past, those campaigns are conducted with frequent use of "dirty war" tactics such as disappearances, selective murders, arbitrary arrests, and aerial strafing and bombing of civilian targets. These operations, combined with raids by the guerrillas, continue to force hundreds of civilians to escape conflict areas and join the increasing ranks of the displaced living precariously in cities and towns.

Despite this grim overview, several initiatives by the Gaviria government have given rise to hopes for institutional solutions to some of the country's human rights problems. Foremost among these developments is the approval of a new Constitution, after a process that seemed to pry open Colombia's relatively closed political system by providing new means of participation for many Colombians who have felt excluded for decades. The idea took hold after an initiative by university students to conduct a write-in referendum as part of the May 1990 elections on the question of convening a constituent assembly to draft a new constitution. The idea gained wide support, and the Gaviria government organized an election for an assembly in December 1990. The Supreme Court ruled that the assembly would have complete authority to rewrite the Constitution, so long as the democratic system of government was maintained. In the December election, substantial support was given to lists of candidates that included former guerrillas who had recently given up armed struggle through the peace process. The Constituent Assembly met in Bogotá between February and July 1991 and produced a new Constitution.

The revised Constitution incorporates many fundamental principles of human rights protection, including standards that are not usually found in other national charters. It provides that the human rights instruments signed and ratified by Colombia will prevail over domestic law. An expeditious recourse to the courts (*acción de tutela*) was created to allow people to seek judicial protection of fundamental rights that have been violated by actions or omissions of public officials, as well as to force compliance with a law or administrative order. "Popular actions" were also created to allow people to seek judicial protection of collective

interests and rights. The office of an ombudsman (*defensor del pueblo*) was created under the supervision of the attorney general, with broad powers to bring lawsuits, educate the public about human rights, and promote laws to improve the protection of human rights. The ombudsman and the attorney general are expressly authorized to demand information from any authority, without reservation or claim of secrecy, except as contemplated by law or the Constitution. Jaime Córdoba Triviño, who had distinguished himself as prosecutor-delegate for human rights, has been appointed the new ombudsman. However, the office remains in the planning stages. The Constitution sets forth clear rules for invoking states of exception, including limits on their duration, scope and extent, and the circumstances under which they can be established. It makes clear that fundamental human rights and liberties cannot be suspended under any circumstance.

The new Constitution fell short of expectations in some respects, particularly in defining the powers of the military and security forces. It reaffirmed the concept of military-court jurisdiction for crimes committed by military officers, which has been a principal cause of impunity for many years. Military courts have been used as a way of preventing investigations by civilian courts and prosecutors; once their jurisdiction is established to the exclusion of others, cases lapse without a serious attempt at investigation, let alone punishment. In the case of the police, the new Constitution legitimized what had been a perverse practice, not contemplated by the previous Constitution, of having police violations of human rights also reserved for military courts. The most troubling new constitutional clause in this area is the one creating an absolute defense of obedience to orders for members of the military and police who commit crimes.

As a result of the new Constitution, the state of siege was lifted throughout the country, leaving Colombia free of civil liberties restrictions. This is an important change because successive governments had ruled with emergency powers for most of the last forty years. The writ of *habeas corpus* was also clearly established, with the obligation that petitions be resolved within thirty-six hours. Until recently, *habeas corpus* protection had been rendered superfluous through various emergency regulations. It remains too early to tell whether in fact *habeas corpus* will become a useful tool against disappearances and arbitrary arrests.

Some of the emergency legislation used to pernicious effect during so many years of state of siege survived the Constituent Assembly. Among a number of transitory decisions made pending the election of a new

Congress, the Assembly allowed the courts of special jurisdiction to stand. These courts, now known as Public Order courts, were created under the government of President Barco, and reorganized but retained under President Gaviria, to try cases related to political violence and drug trafficking. Their jurisdiction extends not only to guerrilla suspects and accused drug traffickers, but also to cases of paramilitary violence. Their principal feature is the so-called "nameless judge." Magistrates in this jurisdiction interview defendants and witnesses through a one-way glass, and use electronic devices to distort their voices. This secrecy is justified by the government as necessary to protect Colombian judges from being identified and attacked by defendants or their powerful supporters. Their decisions are signed anonymously and certified by an administrative supervisor. Most fundamental among their due process deficiencies, the courts refuse to reveal the identity of certain prosecution witnesses, who are shielded from cross-examination by the defense.

To President Gaviria's credit, some aspects of the emergency legislation that were most offensive to due process were not included in the submissions to the mini-Congress, which was created by the Assembly pending the convening of the new Congress.³¹ In addition to dropping restrictions on *habeas corpus* protection, the Assembly abandoned the power given to the army, through military judges, to make arrests and conduct searches and seizures in the course of preliminary investigations; the power (by any authority) to hold persons in *incommunicado* detention; and the restriction on the right to counsel prior to the defendant's first interview with a judge (now there is right to counsel from the moment of arrest). Nonetheless, an important part of criminal activity, particularly that related to political violence and drug trafficking, is still under the jurisdiction of special courts that suffer from serious due process shortcomings.

The Gaviria government continued to pursue its policies for a negotiated solution to the long-standing guerrilla conflict. Negotiations started in 1990 with the EPL — one the country's three largest guerrilla

³¹ In transitory articles, the Assembly created a "special Legislative Commission," known also as a "mini-Congress," with appointed members representing the distribution of political forces in the Assembly. The mini-Congress was in session until the new Congress, elected on October 27, 1991, was installed in December. The powers of the mini-Congress were limited to "disapproving" legislation proposed by the Executive branch.

organizations — and were successfully concluded in early 1991. The EPL joined the political process as a new movement called Hope, Peace and Liberty, and two of its members took specially reserved seats in the Assembly. In 1991, the government began to discuss a political settlement with the FARC and the ELN, the two largest organizations which, together with a small EPL splinter group that refused to join the peace accord, now conduct joint operations under the name of the Simón Bolívar Guerrilla Coalition. Toward this end, the government abandoned some of its previous conditions for talks, such as demanding agreement by the FARC and ELN to a unilateral cease-fire, refusing to meet in foreign countries, and refusing to accept outside monitoring. Talks between the government and FARC-ELN representatives took place during most of 1991 in Caracas, Venezuela, but a cease-fire does not appear imminent.

Since late 1990, a willingness to negotiate has also characterized the government's policy on the drug trade. At the time, the government enacted legislation offering leniency, nonextradition and reduction of penalties to traffickers who surrendered and offered evidence against others. Three members of the Ochoa family made use of these provisions between November 1990 and February 1991, leaving only Pablo Escobar and his closest associates as at-large leaders of the Medellín cartel. Escobar surrendered in late June 1991, immediately after the Assembly voted to make extradition of Colombian nationals illegal under the new Constitution. It appears that this policy of the Gaviria government, which was actively and vocally opposed by the Bush Administration, has succeeded in putting the Medellín cartel out of the drug trafficking business, although the rival Cali cartel has continued to thrive, and it remains possible that some of the Medellín cartel's activities will be picked up by new traffickers. Most important to the concerns of Americas Watch, this approach has resulted in a sharp reduction in violent crimes attributable to the Medellín cartel, as explained above. Paramilitary murders have continued, thereby tending to disprove a theory that was actively espoused by the Barco, Gaviria and Bush Administrations: that most of the political violence in Colombia originated with either the Medellín cartel or the leftist guerrillas. In fact, the center of murders and massacres by paramilitary groups seemed to move during 1991 to the Cauca River Valley, an area of heavy ELN activity close to the city of Cali. Observers see the emergence there of a renewed alliance between drug traffickers (this time linked to the Cali cartel), landowners and army officers as the main factor behind the growth of paramilitary violence in

the region. The victims are generally suspected of ELN sympathies.

In 1991, the Gaviria government took some important steps to bring the country's security forces under civilian control. For the first time in forty years, a civilian was appointed minister of defense. The job went to Rafael Pardo, a close aide to President Gaviria who had distinguished himself as the presidential counsellor for peace by successfully negotiating the peace accord with the M-19 and, more recently, had served as presidential counsellor for security. Pardo has responsibility for defense policy, but no supervisory role over the Joint Chiefs of Staff on operational matters, or control over the military courts. President Gaviria also appointed a civilian, Fernando Brito Ruiz, to head the Administrative Department of Security (DAS), a law-enforcement and intelligence body which was given a large role in combating paramilitarism and drug traffic. Until September 1991, the DAS was led by Armando Maza Márquez, a police general originally appointed by President Barco, who became powerful because of his control of intelligence operations and the open support he enjoyed from the United States. President Gaviria had also intended to appoint a civilian to replace General Miguel Antonio Gómez Padilla as head of the National Police, but the statute governing that body requires a career police officer to occupy the post. General Gómez had achieved prominence for his role in fighting the Medellín cartel, frequently using "dirty war" tactics. These important personnel changes indicate a desire to regain civilian control over powerful agencies that have frequently shown a tendency to act as autonomous forces within the state. Even given the limitations in their effective powers, the appointment of these new civilian authorities is encouraging.

In the immediate wake of these appointments, there also has been unprecedented activity in the investigation and prosecution of a few serious crimes attributed to military officers. A second lieutenant, a sergeant and several soldiers have been indicted for the August 18 murder of seven persons — five belonging to the same family — in the city of Fusagasugá, near Bogotá, in an episode first described by the regional army command as a confrontation with guerrillas. An army sergeant and two soldiers also face prosecution for the September murder of grassroots leader Gildardo Gómez in Barrancabermeja. In both cases, aggressive investigations by civilian prosecutors led military courts to prosecute. It is still too soon to know whether these actions represent the beginning of a serious break with the long-standing impunity of the security forces, but the emergence of apparently serious criminal prosecutions before military courts constitutes a major breakthrough in Colombia.

Although the major human rights cases of the last few years continue to languish in the courts, even in cases in which there is substantial evidence of guilt, there have been developments in some instances. In the well-known massacres of banana workers at the Honduras and La Negra farms in Urabá, a Public Order court convicted *in absentia* Fidel Castaño, Henry Pérez, his brother, and nine other members of paramilitary groups, but none was arrested. The military officers linked to these cases are allegedly being investigated separately by military courts. As for the 1990 massacre at Macaravita, a military court closed the case without any indictments, but the Superior Military Tribunal revoked that decision and ordered the arrest of the officers involved. The attorney general's office has successfully completed disciplinary proceedings in two important cases involving the police. It has ordered the dismissal of officers involved in the March 1990 massacre at Inversiones Budapest, a Medellín office building. In the case of journalist Diana Turbay, who was killed while she was being held by kidnappers, five high-ranking officers of the Elite Corps of the National Police, following the completion of disciplinary proceedings, are under criminal investigation for the disappearance of one suspect who apparently had led them to the site where she was being held.

In an important development in September, a major official report on human rights violations was published. It was released by the attorney general's office, which in Colombia is an independent body with disciplinary, but not criminal, jurisdiction over all public officials. For the last several years, the attorney general's office has been an important force promoting investigations into official involvement in political violence, and has contributed to a significantly better understanding of this phenomenon, even if the maximum punishment it could suggest was dismissal, and its investigations were frequently hampered by obstruction from some quarters. Gustavo Arrieta, who has been the attorney general since early 1991, presented his report to President Gaviria in a public ceremony. The report is based on the files developed by his office, particularly by the Delegation for Human Rights created in 1990. While making clear that it covers only one segment of the universe of abuses in Colombia — those in which public officials appear to have been involved — the report presents an undeniable picture of systematic gross abuse. For example, it states that the attorney general's office is investigating sixty-eight massacres in which government forces are implicated during the fifteen months under study. The small percentage of cases in which a final disciplinary decision is reached — between 2.46 and 7.72 percent for

various serious crimes — suggests that impunity for such crimes is rampant in Colombia, which in turn contributes to the repetition of these practices.³² Even fewer cases are criminally prosecuted.

The report received considerable press attention, and President Gaviria issued a public statement highlighting its contribution to efforts to break the cycle of impunity. Unfortunately, the military and security forces were publicly silent about its findings, although the police apparently initiated meetings with the attorney general's office to explore solutions. Since July 1991, the Office of the Presidential Counsellor for Human Rights — headed by Jorge Orlando Melo, a respected social scientist — has been working on an official human rights report also based on the files gathered by that office since its creation by President Barco in 1987. Since the information it gathers is not limited to official abuse, its report is expected to be more comprehensive than the attorney general's.

The Right to Monitor

The nongovernmental human rights movement in Colombia has continued to grow and expand its reach to remote and dangerous parts of the country. It has done so at considerable risk to those who dare to investigate and publicize human rights violations. The July 4, 1990 disappearance in Bogotá of attorney Alirio Pedraza, of the Committee in Solidarity with Political Prisoners, remains unsolved. On December 10, 1991, Human Rights Watch honored Mr. Pedraza as one of the human rights monitors selected annually from around the world to commend their dedication to justice and to highlight their plight. On February 25, 1991, unknown assailants murdered Alcides Castrillón, a member of the National Coordinating Body for Human Rights, Victims and Refugees of Colombia (CONADHEGS), also in Bogotá. His murder, too, remains unsolved. On March 19, José Hernández, a member of the Regional Committee for Human Rights (CREDHOS) in Barrancabermeja, Santander, was also murdered in the streets of that city by anonymous killers.

³² The rate of discipline for lesser infractions such as arbitrary arrest or abuse of authority is between fifteen and twenty percent.

Several human rights monitors received death threats in 1991. Leaders of CONADHEGS received anonymous threats when they investigated the April 7 murder of seventeen peasants in Los Uvos, Bolívar, Cauca. The massacre originally had been attributed to drug traffickers, but the CONADHEGS investigation showed that an army unit had been responsible. Attorney Jorge Gómez Lizarazo, leader of CREDHOS, was also repeatedly threatened and had to leave Barrancabermeja for extended periods.

Two other committees that monitor human rights in Ocaña and Sabana de Torres, Norte de Santander, also received threats for their work. Noelia Parra, a leader of the teachers' union in Santander department and the wife of Isidro Caballero, who disappeared after his arrest by the army in 1989, received threats in October 1991. In September and October, attorney Eduardo Umaña Mendoza received repeated threats as a result of his representation of the victims of the Fusagasugá massacre described above. Umaña has long been involved in human rights work, most recently as a member of the José Alvear Restrepo Lawyers Collective. The government provided special security for Umaña and his colleagues in the collective, and for a few days he left the country. The threats renewed as soon as he returned.

U.S. Policy

As with other Andean countries, U.S. preoccupation with narcotics trafficking has dominated U.S. relations with Colombia, to the detriment of concern for human rights. During 1991, when the United States has been forced to choose between supporting anti-narcotics activities or denouncing human rights violations, the Bush Administration has consistently chosen the former. In fact, the Bush Administration's single-minded pursuit of drug traffickers has at times placed it in direct opposition to the advancement of human rights in Colombia.

The year began inauspiciously when, on January 25, 1991, the Bush Administration submitted to Congress a formal determination stating that Colombia was meeting the human rights conditions contained in U.S. law as a prerequisite for anti-narcotics security assistance. The determination stated:

The Colombian Armed Forces and law enforcement agencies are not engaged in a consistent pattern of gross violations of internationally

recognized human rights, and Colombia has made significant progress in protecting internationally recognized human rights, particularly in —

(A) ensuring that torture, cruel, inhuman, or degrading treatment or punishment, incommunicado detention or detention without charges and trial, disappearances, and other flagrant denials to the right to life, liberty, or security of the person are not practiced; and

(B) permitting an unimpeded investigation of alleged violations of internationally recognized human rights, including providing access to places of detention, by appropriate international organizations (including nongovernmental organizations such as the International Committee of the Red Cross) or groups acting under the authority of the United Nations or the Organization of American States.

The determination also states that the Colombian government has control over police and military operations related to counternarcotics and counterinsurgency activities.

This determination contradicted the State Department's own assessment of human rights in Colombia, published days later in early February 1991 as part of the *Country Reports on Human Rights Practices for 1990*. The report stated:

Members and units of the army and the police participated in a disturbing number of human rights violations including extrajudicial executions, torture, and massacres....Official human rights abuses contravene government policy, but so far efforts by security forces to end such abuses have been inadequate.

The Administration's determination was also inaccurate when it stated that Colombia, as mandated by law, provides access to places of detention by appropriate international organizations, such as the International Committee of the Red Cross (ICRC). Beginning in 1991, the ICRC had been allowed to visit the Administrative Department of Security, where narcotraffickers are often held, and had received verbal authorization for access to detention centers of security organs of the National Police. However, as of the date of the determination, the

Colombian military had *not* allowed the ICRC to inspect its detention centers, although the ICRC had been publicly asking for access for two years. Indeed, in February 1991, the national director of criminal investigations told the ICRC that it would not be possible for the ICRC to visit Ministry of Defense detention centers, even though there is evidence that torture and eventual disappearances take place at these facilities.

Only in April did the government offer the ICRC access to all detention centers, including those of a "temporary" nature — a veiled reference to military detention centers. By the end of 1991, it appeared that the ICRC had been allowed access to police and military detention centers without interference.

The determination also overstates the importance of the role played by the attorney general's office. The determination alleges that the attorney general's office has conducted aggressive investigations into allegations of human rights violations committed by security-force personnel, and asserts that those investigations have resulted in the dismissal of a number of officers and enlisted men from both the military and police forces. In reality, the attorney general's office, no matter how well-intentioned, has serious limits on its ability to enforce its decisions. Until the new Constitution was enacted in July, the office could only *suggest* dismissal of members of the security forces, and except in a handful of cases its suggestions were ignored by the armed forces. The Administration goes on to misrepresent the human rights situation by stating that the military and police, on their own initiative, are also dismissing suspected human rights violators. In fact, the only disciplinary action taken is at the behest of the attorney general's office.

The determination even dismisses torture by the police and military personnel by stating, "these abuses are contrary to government policy and the Government condemns them." Americas Watch believes, and the Bush Administration should understand, that it does not matter whether the use of torture runs against government policy so long as the government does not act effectively to end the practice. Indeed, as noted, the State Department's own report on Colombia observes that "efforts by [Colombian] security forces to end such abuses have been inadequate."

Although Congress could have protested the flawed determination, as it did in the case of Peru, it instead allowed the release of all of the requested anti-narcotics assistance. During fiscal year 1991, Colombia received \$27.1 million in military assistance and \$50 million in Economic

Support Funds.³³ Police aid amounting to \$20 million was also made available, and an additional \$713,000 was given for developmental-assistance programs.

Colombia also received \$2.5 million in military training in fiscal year 1991. Through this program, Colombian military personnel receive human rights training at U.S. military schools, including classes on the treatment of civilians and captured combatants. However, according to a September 1991 report by the U.S. General Accounting Office, officials could not provide information on the number of military or police officers receiving instruction under this program because such records are not maintained.³⁴ Americas Watch believes that, to evaluate the success of the human rights training program, records must be maintained and the activities of those military or police personnel receiving such training should be monitored.

As discussed above, the United States publicly condemned the Constituent Assembly's decision to make extradition illegal. During the debate on banning extradition, then-Ambassador Thomas McNamara stated that the ban was "a mistake...given the weakness and corruptness of the judicial system. Losing extradition is losing a valuable tool in the fight against narcotics trafficking."³⁵ Americas Watch disagrees with Ambassador McNamara on the value of extradition as carried out in Colombia from late 1989 until late 1990. Not only did extradition fail to produce significant results in convicting prominent traffickers, but the system instituted by President Barco and vigorously defended by the United States had serious human rights flaws. It was conducted through strictly administrative proceedings without judicial review, and it was the

³³ The Bush Administration originally had requested \$58 million in military assistance for fiscal year 1991, but after the United States and Peru failed to reach an agreement on anti-narcotics assistance during 1990, a large portion of the military aid originally destined for Peru was granted to Colombia and subtracted from Colombia's original fiscal year 1991 request.

³⁴ U.S. General Accounting Office, "Drug War: Observations on Counternarcotics Aid to Colombia," September 1991, p. 37.

³⁵ Douglas Farah, "Top Colombian Trafficker Surrenders," *The Washington Post*, June 20, 1991.

occasion for serious abuse.³⁶ On the other hand, the discontinuation of extradition and the offer of prosecution with leniency to those who surrendered led to a dramatic reduction in violent crimes attributable to the Medellín cartel and to the detention of major traffickers, although it is too soon to tell whether they will be convicted and appropriately punished by the Colombian justice system.

The United States has also been highly critical of the preferential treatment granted cartel kingpins who surrendered. Following Medellín cartel leader Pablo Escobar's surrender, Robert Martínez, the director of the Office of National Drug Control Policy asked, "Is there anyone here who does not want to see Escobar with his feet chained, breaking stones in the quarry of justice?"³⁷

In July 1991, in an apparent attempt to bolster Colombia's judicial system, the Bush Administration announced a \$36 million six-year project to support judicial reform. The goal of the project is reportedly to improve the effectiveness of the Colombian judicial system so that major narcotics traffickers can be brought to justice without extradition to the United States. However, a controversial aspect of the judicial-reform program is U.S. support for the use of special courts which, as explained above, violate due process norms.

In a disturbing example of the pursuit of narco-traffickers at any cost, the United States protested President Gaviria's dismissal in September of Police General Armando Maza Márquez. General Maza, who was replaced by a civilian, had led a bloody campaign against drug traffickers. He was allegedly involved in the torture and extrajudicial executions of drug-trafficking suspects and their families. In addition, the 1990 murders of presidential candidates Bernardo Jaramillo and Carlos Pizarro happened while he was responsible for their safety. Nonetheless, the United States supported him because he had worked closely with the U.S. Drug Enforcement Agency. Unfortunately, so much of General Maza's anti-narcotics campaign was devoted to killing cartel leaders that little useful evidence was collected against the cartel kingpins who have

³⁶ For examples of mistreatment of prisoners detained pursuant to extradition requests, see Americas Watch, *The "Drug War" in Colombia: The Neglected Tragedy of Political Violence*, October 1990.

³⁷ *El Nuevo Siglo*, June 26, 1991, as reported in Foreign Broadcast Information Service, July 2, 1991.

now turned themselves in.

The Work of Americas Watch

In May 1991, an Americas Watch staff representative visited Colombia to hold meetings at high levels of the Gaviria government and to conduct fact-finding in Bogotá and Medellín. The representative participated in the launching of the Spanish version of our 1990 report, *The 'Drug Wars' in Colombia: The Neglected Tragedy of Political Violence*, published under the auspices of two of Colombia's most respected research centers, the Institute for the Study of Politics and International Relations of the National University, and the Center for International Studies of the University of the Andes. The representative also was invited to address a joint session of two committees of the Constituent Assembly, and urged it to approve the constitutional provisions then under consideration to strengthen due process and break the cycle of impunity.

The Americas Watch staff published an article on Colombia in the January 1992 issue of *World Monitor Magazine*. In October, the representative returned to Bogotá for further fact-finding and dialogue with the government. Americas Watch expects to publish a new comprehensive report on human rights in Colombia in early 1992.

CUBA

Human Rights Developments

The Cuban government intensified its campaign of repression against human rights advocates and political dissidents in 1991, as rights-monitoring and pro-democracy associations strove to maintain a small political space for their peaceful activities.

Cuban authorities continued to detain dissidents and imprison human rights activists; to organize mobs for staged demonstrations against government critics in so-called acts of repudiation; and to dismiss writers,

artists and union leaders from their jobs and unions for voicing dissent. "Rapid response brigades" — government-organized bands of civilian recruits — were a new development in 1991, used to intimidate "individuals with political and ideological problems."³⁸ Plainclothes state-security police, better known for their subtler forms of repression, brutally assaulted political dissidents in a rash of targeted attacks. The government's actions against its most outspoken critics remind all Cubans, long accustomed to a government that rewards conformity, of the high cost of challenging the status quo.

Ruled for thirty-three years by Fidel Castro, Cuba lacks the laws and institutions that would protect basic civil and political rights. There is no free press. Only state-owned and -controlled media may operate legally. Free speech is curbed by laws that prohibit "enemy propaganda," "contempt" and "clandestine printing." Peaceful dissenters are sometimes imprisoned on charges as serious as "incitement" and "rebellion." For insulting President Castro, Cubans are imprisoned for up to three years.

There are no legally recognized civic or political organizations — such as labor unions or political parties — that are independent of the government or Communist Party. Free association and assembly are punished under laws that prohibit "illegal association" and "public disorder." There are no free and fair legislative or presidential elections.

The Cuban legal system is designed to maintain the status quo. Cuban courts are subordinate to the executive, and Cuban judges are required to demonstrate their "active revolutionary integration." Once arrested, defendants, especially in political cases, are almost always convicted.

Tight political control in Cuba is maintained through extensive monitoring of Cubans' daily lives. The monitoring is conducted by state-security police and government-sponsored surveillance organizations such as the Committees for the Defense of the Revolution, which operate in the neighborhood and workplace. The failure to report criminal activity, including political or free-expression "crimes," is punishable under Cuban law.

In schools, teachers keep records on each student, detailing information such as the "ideological integration" of the parents and whether the family actively practices a religion. In late 1991 the

³⁸ "Cuba Creates 'Rapid Action Groups' to Stop Public Dissent," Reuters, July 11, 1991.

Communist Party-led mass organization for school children, the Pioneers, considered creating "rapid response brigades" in the schools to deal with schoolchildren "affected" by foreign ideas.³⁹

One exception to the otherwise bleak human rights picture in 1991 was the easing of travel restrictions. For years, only men over the age of sixty-five and women over age sixty were permitted to travel abroad and return to Cuba. In 1991, this restriction was gradually reduced, and in August, the age limit was lowered to twenty for men and women. This trend has been interpreted by some as an attempt by the Cuban government to create an escape valve — through emigration — to reduce internal tension caused by deepening economic austerity. Cubans enjoy the unique privilege under U.S. law of being allowed to overstay their tourist visas when visiting relatives in the United States while remaining eligible for an immigrant visa. Regardless of the government's motive, the loosening of travel restrictions represents a significant human rights improvement.⁴⁰

At the same time, Cubans who do not qualify for travel because they fail to meet either Cuban or U.S. conditions have been departing in record numbers on makeshift rafts and small boats. Leaving the country without the Cuban government's approval is illegal under Cuban law and punishable with one to three years in prison. The hundreds who have been convicted of "illegal exit" are thought to constitute the largest category of political prisoners in Cuba today.

In the course of 1991, the Cuban government released at least five human rights monitors and political activists from custody before completion of their prison sentence. In addition, the last two remaining "historical *plantados*," or long-term prisoners who refused to cooperate with the prison "reeducation" program, were released — one, after serving twenty-two years of a forty-year sentence, and the other, a mere twenty-

³⁹ "Child Vigilante Groups Suggested for Cuban Schools," Reuters, November 2, 1991.

⁴⁰ However, shortly after the Cuban government announced the reduction in the age limit for travel, the United States announced that its Interests Section in Havana would suspend acceptance of new tourist-visa applications so that it could process a backlog of pending applications. The sudden announcement was seen by some as a way of undermining the Cuban government's attempt at securing an "escape valve."

four hours before his thirty-year prison term expired.

Nineteen ninety-one saw an increase in limited forms of independent political activity in Cuba. The emergence of a variety of independent — and therefore illegal — democracy advocacy groups was spurred by frustration with the government's political intransigence and concern about the effects of heightened economic hardship caused by the loss of Cuba's traditional international trading partners. Some of these independent groups were singled out for especially harsh extra-judicial retaliation. The repression began to intensify in the months preceding the Pan American Games in August, when Cuba hosted thousands of foreigners and foreign journalists, and continued through the remainder of the year.

- o In June, Cuban authorities orchestrated a series of reprisals against the Harmony Movement (MAR), a social democratic organization which advocates peaceful change and democracy. MAR has deliberately engaged in relatively tame activities — such as attending masses at churches in sizable numbers — and had prepared the first issue of a pro-democracy publication, *La Opinión*, which had not yet been distributed when it was confiscated by state-security police. After gathering at churches, five MAR members in two separate incidents in Havana were assaulted on the street and badly beaten by small bands of what are widely believed to be plainclothes state-security agents. In a third incident, Yndamiro Restano, the leader of MAR was attacked on his way to meet with a well-known human rights advocate.
- o After searching their homes on June 30, state-security police arrested eleven MAR members and threatened them with charges of "illegal association," "enemy propaganda," "clandestine printing" and "inciting rebellion." The eleven were released a day later after receiving "official warnings." Six others were fired from their jobs and expelled from their official trade unions.
- o Also in June, a group of dissident writers and other cultural figures issued a statement calling for, among other things, a national debate about the future of the country, direct legislative elections, and an

amnesty for all prisoners of conscience.⁴¹ The authorities retaliated by firing from their jobs six signers of the "Declaration of Cuban Intellectuals" and expelling them from the official writers,' artists' and journalists' unions. One of them, María Elena Cruz, a prize-winning poet, was viciously attacked in the official press and subjected to an "act of repudiation" — a staged demonstration in which a mob gathers in front of the home of a suspected "counterrevolutionary" and chants threats and revolutionary slogans. A seventh signer fended off an attack by two plainclothes assailants believed to be state-security agents.

- o Members of two other independent groups — *Criterio Alternativo* (Alternative Criterion), a small political study group, and *Liberación*, a Christian Democratic movement which advocates reform of the Cuban Constitution — were subjected to acts of repudiation in July. On July 19, the police detained Roberto Luque Escalona, of *Criterio Alternativo*, for shouting back at the mob staging the act of repudiation. The activist was held for more than one month on charges of contempt.
- o On September 6, state-security police arrested four activists affiliated with a grouping of independent associations known as the Cuban Democratic Coalition, as they peacefully demonstrated in front of state-security police headquarters in Havana to demand the release of political prisoners. The protest, staged by some twenty demonstrators in all, was violently suppressed by assailants in civilian clothes, widely believed to be state-security police and members of the newly created rapid action brigades. The four detained protesters were convicted on charges of "public disorder," and one of them was also convicted of incitement. They were sentenced to prison terms ranging from ten months to two years.
- o On September 23, police arrested eight members of the Cuban Democratic Coalition at the home of an activist, where they were waiting to participate in telephone interviews with Radio Martí, the

⁴¹ Ironically, one of the reforms called for by the writers — direct legislative elections — was later adopted during the Fourth Communist Party Congress held in Santiago de Cuba in October.

Cuban programming section of the U.S. Information Agency's Voice of America, and the radio station of the Cuban-American National Foundation, an exile lobbying group based in Washington, D.C. The eight reportedly were held overnight in a police station and then released without charge the following day.

- o In October, police arrested fourteen activists affiliated with the Cuban Democratic Convergence (CDC), a newly formed grouping of several human rights and pro-democracy organizations, after they had held a press conference at the home of Elizardo Sánchez, head of the CDC-affiliated Cuban Commission for Human Rights and National Reconciliation. At the press conference, which was attended by foreign journalists, the CDC activists made statements and distributed leaflets calling on the Communist Party leadership to initiate constitutional reforms and take other steps to protect human rights and establish democratic institutions in Cuba.

Following the press conference, the police detained fourteen members of the independent associations Liberty and Faith, the Association of Defenders of Political Rights (ADEPO), the Followers of Mella, and the Association for Free Art. Ten were held in various Havana police stations for up to a week before being released without charge. As discussed in greater detail below, three other ADEPO members were imprisoned after swift trials, and a fourth — the leader of the group — remains in detention without trial.

- o On November 19, in a second "act of repudiation" directed against María Elena Cruz, scores of armed state security police and a mob of civilian recruits — perhaps as many as two hundred — surrounded her home. A mob burst into her apartment, forced her out, dragged her by the hair down four flights of stairs, and beat her while chanting "Down with the Worms!" and firing gunshots into the air. Cruz was taken into police custody for several hours and released without charge. She was rearrested two days later and taken to the Havana state security facility, Villa Marista. Cruz was tried on November 28, along with three other members of *Criterio Alternativo*, and convicted of "illegal association" and "defamation of state institutions." She is now serving two years in prison.

- o The same day, Marco Antonio Abad, a twenty-six-year-old filmmaker and former member of the Cuban film institute, was arrested by state security police as he attempted to videotape the "act of repudiation" against María Elena Cruz. He is being held in Villa Marista.
- o Between November 19 and 24, Cuban authorities cracked down on numerous peaceful political activists and human rights monitors, arresting them and staging violent "acts of repudiation" against them. Seven members of *Criterio Alternativo* were arrested, some after mobs attacked them at their home. Three — Gabriel Aguado, Pastor Herrera and Jorge Pomar — were tried on November 28, along with María Elena Cruz, and sentenced to prison terms ranging from sixteen months to two years for "illegal association," "clandestine printing" and "defamation of state institutions." Human rights monitor Elizardo Sánchez, president of the Cuban Commission for Human Rights and National Reconciliation, was briefly detained by state security police twice in two days. His brother, Gerardo Sánchez, who is also active in the commission, was detained at the time of Elizardo Sánchez's second arrest. When they were returned to their home, they were subjected to a gauntlet of beatings by a mob staging an "act of repudiation" outside. Their home was placed under virtual siege by the police. At least nine other activists and their relatives were briefly detained or attacked by mobs.

In addition to these new attacks and arrests, other political activists, including four members of the Movement for Democratic Integration, remained imprisoned throughout 1991, serving long terms of up to seven years for their peaceful advocacy of reform.

Prison inmates — both political prisoners and prisoners convicted of common-law crimes — reported that nonviolent protests in their cells spawned retaliation in the form of frequent beatings, confinement in harsh punishment or isolation cells, denial of medical attention and confinement in prisons far from their families. Two prisoners who participated in a hunger strike — Orlando Azcué Rodríguez and Israel López Toledo — were chained by the arms to the bars of their cells and severely beaten on several occasions. A third hunger striker, Orlando Domínguez de la Caba, who has only one arm, was also chained to the bars of his cell for long periods in January.

At least five prison inmates were reported killed by guards in various prisons, and at least three detainees were reported to have died in police custody during 1991. Human rights monitors in Cuba have also reported the use of excessive force by the police. In one incident, reported at the end of October, a police officer allegedly shot and killed a man who protested when the officer beat a suspect. Although it is difficult to confirm these reports and to ascertain the government's reaction, Americas Watch reported them in 1991 in the hope that Cuban authorities would provide clarifications and, when abuses have occurred, conduct vigorous investigations and punish those responsible.⁴²

The Right to Monitor

Human rights monitoring is effectively illegal in Cuba. Despite numerous petitions for official recognition submitted to the Ministry of Justice by the various human rights monitoring groups currently attempting to function in Cuba, none has gained legal status. Laws restricting free expression and association combined with near-constant surveillance by the state-security police ensure that human rights monitoring is frequently punished.

Cuban human rights activists are routinely harassed, intimidated and threatened by the state-security police, and frequently arrested. Since 1989 Cuban authorities have made more than 150 arrests of human rights monitors and pro-human rights political activists. At least twenty-two human rights monitors — not including political dissidents — are currently serving prison terms of up to five years in connection with their human rights activities.

As noted above, the authorities tried and convicted three members of ADEPO, a human rights monitoring group launched in 1991, after they had participated in an October 7 press conference of the Cuban Democratic Convergence. The activists — Reinaldo Betancourt Alvarez, Anibal Cruz and Julian Jorge Reyes — were found guilty of "illegal association," "clandestine printing" and "incitement to commit crime," and are serving two- and three-year prison sentences. The leader of ADEPO, Luis Alberto Pita Santos, who was also arrested on October 9, was

⁴² See Americas Watch, "Cuba, Behind a Sporting Facade, Stepped-up Repression," August 1991.

detained for two weeks in a police station and then transferred at the end of October to the Havana Psychiatric Hospital. After about two weeks in psychiatric detention, he was returned to the police station. He reportedly faces charges of "contempt of the President of the Council of State" — referring to President Castro — as well as "clandestine printing" and "incitement."

State-security police frequently search the homes of human rights monitors, confiscating possessions such as typewriters, tape recorders and documents. Several human rights monitors have been subjected to acts of repudiation. Many have been fired from their jobs. At various times they have been either prevented from or pressured into leaving the country. Members of human rights groups are officially denounced as "counterrevolutionaries," "fifth column," "*lumpen*" and "worms."

International human rights monitoring has been severely restricted since a brief opening in 1988. Despite repeated requests, Americas Watch has yet to receive permission from the Cuban government to conduct the kind of open investigation — involving meetings with a broad range of victims, witnesses and monitors, and exchanges of views and information with pertinent government officials — that it undertakes routinely elsewhere in the region. Over the years, members of the Americas Watch board and staff have been allowed to enter the country only under the auspices of other organizations or, in one case, in connection with a U.N. event in Havana.

The Cuban government refused to cooperate with the resolution adopted in 1991 by the U.N. Commission on Human Rights, which authorized the appointment of a special representative for Cuba to investigate human rights conditions and report his findings to the next commission session. As detailed below, the government denied the special representative permission to visit Cuba. The Cuban government's 1988 agreement with the International Committee of the Red Cross granting access to Cuban prisons and political prisoners remains suspended, having been broken by the Cuban government in 1990.

U.S. Policy

Because of its adversarial relationship with Cuba, the Bush Administration has limited influence on the Cuban government's human rights practices. The major source of leverage is the U.S. trade embargo on Cuba, which the Administration has said it will continue to support

until human rights improvements and democratic reforms are implemented.

Americas Watch takes no position on the trade embargo. However, we object to several discrete aspects of the embargo that are inconsistent with the human rights obligations of the United States. Chief among them is the effective ban on free travel to Cuba by those residing in the United States.

Under the 1975 Helsinki Final Act and successive accords reached by the Conference on Security and Cooperation in Europe (CSCE), the United States has vowed to lift restrictions limiting "human contacts," including bans on travel (Final Act) and telephone communications (Concluding Document of the Vienna Follow-Up Meeting in 1989). Although these human rights instruments are technically applicable only to relations among CSCE members — thirty-five European states, the Soviet Union, Canada and the United States — the principles set forth in the instruments would clearly favor the removal of any barrier on human contacts raised by a CSCE government in its relations with other nations.

Although the embargo allows U.S. citizens to travel to Cuba, they are prohibited from spending any money there without the permission of the U.S. Treasury Department. If citizens defy this restriction, they can be prosecuted for "trading with the enemy," imprisoned for up to twelve years and fined up to \$500,000 for corporations and \$250,000 for individuals. The Treasury Department makes exceptions for only four categories of visitors to Cuba: U.S. or foreign government officials or officials of any intergovernmental organization of which the U.S. is a member; family members with relatives in Cuba; academics and researchers with Cuba-specific expertise; and news media personnel. All other Americans traveling to Cuba must be guests of the Cuban government.

The travel ban also applies to Americans who since 1988 have been allowed to import "informational materials" from Cuba — books, films, records and, since April 1991, art. Would-be importers may not travel to Cuba to arrange for these materials to be sent to the United States.

The embargo also impedes telephone communications between Cubans and Americans by blocking payment of revenue due to Cuba for completing the calls. In 1987, the underwater telephone cable that had been in use since before 1959 — the year Castro came to power — finally broke down. The current AT&T cable to Cuba, which had been in place since 1989, is part of a used transatlantic cable that, because of U.S. restrictions on upgrading, is not state of the art. Nevertheless, connection

of this cable would greatly improve the quantity and quality of communications currently provided by "over the horizon" radio service.

Since AT&T bills almost one hundred percent of calls between the countries — both calls originating in the United States and collect calls from Cuba — the Cuban telephone company must depend on AT&T for its share of revenue. However, the U.S. embargo against Cuba makes it illegal for AT&T to provide that payment to anything other than an escrow account. Although the Cuban state telephone company has helped to complete calls to and from the United States for three decades in return for payment that is placed in an escrow account, it is now requesting direct payment due to Cuba for calls it continues to complete, as a condition for connecting its end of the refurbished underwater cable. In the meantime, the Cuban telephone company continues to complete calls on the "over the horizon" system under the escrow account arrangement.

The State Department, in conjunction with the U.S. Interests Section in Havana, has been producing increasingly reliable human rights reports on Cuba. The State Department's *Country Reports on Human Rights Practices for 1990*, issued in February 1991, provided a largely accurate account of human rights violations in Cuba. It refrained from the exaggerations and distortions that had characterized the State Department's reporting under the Reagan Administration, and were routinely repeated by the U.S. ambassador to the United Nations Commission on Human Rights, former Cuban prisoner Armando Valladares.

With the resignation of Ambassador Valladares in December 1990, the Bush Administration gained an excellent opportunity to ensure that its efforts at the Geneva meetings of the United Nations Human Rights Commission would be more credible and effective. In 1991, the United States was largely responsible for a resolution adopted by the commission which provided an appropriate mechanism for scrutinizing the Cuban government's human rights practices and increasing pressure on the Cuban government to respect human rights.

Involvement of the United Nations

The resolution on Cuba adopted in 1991 by the United Nations Human Rights Commission called for the appointment of a special representative for Cuba, to be selected by U.N. Secretary General Javier

Pérez de Cuéllar in consultation with the commission, and for a human rights report to be presented for open debate during the commission's 1992 session. The final resolution was an amended version of a far weaker Latin American proposal which had called for the secretary general to maintain contacts with the Cuban government and to report on those contacts during a confidential session in 1992. The final resolution was passed on a vote of twenty-two in favor (including Argentina, Canada, Japan, Panama, the United States and ten European nations), six opposed (Cuba, China, Ethiopia, Iraq, Ukraine and the USSR), and fifteen abstentions (including Brazil, Colombia, Mexico, Peru and Venezuela). Adoption was secured after the U.S. delegation at the last minute introduced compromise language that had been proposed by Argentina. The Argentine role in brokering the compromise and supporting the final resolution has led the Cuban government-controlled press to criticize Argentina on several subsequent occasions.

Under the adopted resolution, the U.N. special representative is to pursue contacts with the government and people of Cuba and, ordinarily, to visit Cuba. However, the Cuban delegation to the commission immediately announced that Cuba would not grant access to the special representative.

In July, Rafael Rivas Posada of Colombia, the delegate who represented Latin America in a 1988 visit to Cuba by a commission delegation, was appointed as the special representative. Cuban Ambassador to the U.N. Ricardo Alarcón de Quesada quickly reiterated his government's position that the special representative would not be allowed into Cuba, alleging that the resolution was part of the "aggressive [U.S.] policy toward Cuba" for which "there is no justification."⁴³

The 1991 resolution was an improvement on prior resolutions in several respects. First, the duties of the special representative as defined in the 1991 resolution come closer to the most stringent form of scrutiny engaged in by the United Nations — a status which is fully appropriate to Cuba's tightly closed society.

Second, the mandate of the special representative was broader than the inquiry authorized the prior year. The 1990 resolution called on the U.N. secretary general to report in 1991 on his contacts with the Cuban government relating to specific human rights questions still pending from

⁴³ "U.N. Names Rights Observer for Cuba; It Rejects Him," *The Washington Post*, July 3, 1991.

the 1988 visit to Cuba by a commission delegation. Unfortunately, the secretary general's report on these contacts was little more than an exchange of letters between him and the Cuban government, which focused on reprisals taken against at least twenty-two human rights activists who had provided testimony to the commission delegation during its visit to Havana in 1988. While this topic was extremely important, the secretary general failed to report on such continuing violations as the Cuban authorities' arrest since then of some 150 activists who were attempting to monitor or promote respect for human rights. The 1991 resolution authorizes a comprehensive review of Cuban human rights conditions.

Third, the 1991 resolution explicitly authorized the inquiry to take account of reporting by nongovernmental organizations. As a result, while the refusal of the Cuban government to allow Ambassador Rivas to visit Cuba raises a substantial hurdle to his reporting, the hurdle is not insurmountable in light of the substantial information available from nongovernmental sources. Ambassador Rivas met in October with a broad spectrum of human rights monitors who follow developments in Cuba, including Americas Watch.

Despite its rhetorical attempt to dismiss as a product of U.S. hostility the international condemnation of its human rights record that was inherent in the 1991 resolution, the Cuban government's failure to cooperate with the U.N. special representative damages its international image still further and will certainly be frowned upon at the next commission session.

The Work of Americas Watch

An Americas Watch researcher was able to visit Havana for four days in April as a member of a delegation of publishers from the United States. Members of the delegation met with human rights monitors and political dissidents, as well as with Cuban government officials.

Americas Watch published two lengthy newsletters on Cuba in 1991. "Attacks Against Independent Associations, March 1990-February 1991" was issued in February, in time for the meeting of the U.N. Human Rights Commission in Geneva. "Behind a Sporting Facade, Stepped-up Repression" was released in August during the Pan American Games, when Cuba was a focus of international press attention.

Americas Watch continued to campaign on behalf of individual

political prisoners.

DOMINICAN REPUBLIC

Human Rights Developments

In three months, from June through September 1991, thousands of Haitian citizens and Dominican citizens of Haitian origin (so-called Dominico-Haitians) were forcibly expelled from the Dominican Republic or fled in fear of summary expulsion. The expulsions were the Dominican government's latest response to mounting international pressure to end its dependence on forced labor in its state sugar industry — an undisguised lashing out at the victim. The expulsions began abruptly after the Dominican government's forced labor practices became the focus of a report by "Primetime Live," the U.S. television news program, and of congressional hearings in the United States.

The expulsions were deliberately cloaked in a humanitarian facade. Decree No. 233-91, issued by President Joaquín Balaguer, orders the repatriation of foreigners under age sixteen and over age sixty who are working and living on state-run and privately owned sugar-cane plantations. Those over sixty are said to be entitled to receive all benefits owed under Dominican law. The decree provides that the cost of repatriation will be borne by the Dominican government, and that those repatriated will be treated with the utmost respect. The Department of Labor, with the cooperation of the secretaries of the Armed Forces and Foreign Affairs, the National Police, and the Department of Immigration, is directed to ensure compliance with the decree.

In fact, the expulsions were plagued by abuse. Workers whose labor the Dominican Republic has accepted for years, or decades, were torn from their communities and families and sent across the Haitian border. Dominican soldiers, using force, arbitrarily and indiscriminately rounded up Haitians, Dominico-Haitians and anyone else deemed to "look" Haitian. Such legal niceties as Dominican citizenship were dismissed; identification documents were shredded or ignored. Despite the pledge to pay benefits due, wages were often left unpaid. The round-ups

occurred not only on sugar plantations but throughout the country, including construction sites and other enterprises where Haitians live and work. The victims were not only the young and the old but "Haitians" of all ages. Life-long residents of the Dominican Republic were caught up in the dragnet without any opportunity to arrange their affairs or collect their belongings.

Most of those expelled were denied the fair immigration hearing that is due them under Dominican and international law. Rather, they were simply advised of their imminent deportation, without any attempt to determine their citizenship or immigrant status. They were then bused across the border to Haiti, a foreign country to many who speak Spanish as a first language or have few if any remaining relatives there.

Some six to seven thousand are believed to have been forcibly deported as a result of this campaign. In addition, the summary expulsions have engendered a climate of terror for Haitians and Dominico-Haitians residing in the Dominican Republic, leading thousands more — Haitian sources estimate up to forty to fifty thousand — to flee the country.

The expulsions took place against a background of continuing reliance on forced labor to complete the state's sugarcane harvest, at least through the end of the last harvest, which was concluded in June and July. Cane cutters on Dominican state-run sugar plantations are required to work extraordinarily long hours under the searing sun. Most have no choice but to share, with three to five others, small, dark rooms in barracks-style housing, with no electricity, running water, cooking facilities or latrines. For their arduous work, many cane cutters are paid so little that they barely have enough to provide one modest meal a day of rice and beans.

Few Dominicans are willing to cut sugarcane under such conditions. Instead, the Dominican plantations must rely on a foreign labor force, predominantly from neighboring Haiti, to cut cane each year. Although thousands of Haitians and Dominico-Haitians perform the work willingly, this voluntary workforce is insufficient to meet the Dominican government's labor needs. Unwilling to offer the living and working conditions necessary to attract a wholly voluntary workforce, the Dominican government has filled this labor gap by using deceptive and forced recruitment practices to bring Haitians to state-owned sugarcane plantations, and forced confinement to compel them to perform the difficult and dangerous work of cutting sugarcane.

Some recruits are falsely promised appealing work and good wages

by *buscones* (recruiters) who are paid by the sugarcane plantations to lure Haitians to military posts in the Dominican Republic. Other Haitians who attempt to enter the Dominican Republic freely are stopped by border guards and taken into custody. Once entrapped, the Haitians are forcibly transported to the plantations where they are compelled to remain for the duration of the harvest up to six or seven months. Those who try to escape are often arrested and physically abused by guards.

After years of unconvincing attempts to deny and discredit reports of its use of forced labor, the Dominican government in October 1990 introduced a number of reforms that were welcomed by the international community. Decree No. 417-90, issued by President Balaguer, included instructions to regularize the immigration status of all Haitians in the Dominican Republic; to improve living conditions on the *bateyes*, where the cane cutters live; and to provide all sugar workers with individual work contracts specifying wages, hours and, notably, the right to break the contract and seek work at another plantation or to return to the worker's country of origin. Following the announcement of the decree, the Secretary of Labor prohibited the use of "intermediaries" to recruit workers and made recommendations for an orderly and fair recruitment process.

However, many of these announced reforms were not implemented, and conditions of coercion persisted during the 1990-91 harvest. Moreover, in light of the 1991 repatriation decree, it appears that the Dominican government has suspended any attempt to regularize the immigration status of Haitians in the Dominican Republic — one of the important promises of the October 1990 decree.

The Right to Monitor

Dominicans generally enjoy the right to monitor human rights in their country. For years, there has been great public attention in the Dominican Republic to the issue of forced labor, and in 1991, discussion about the deportations was widely aired. However, many domestic human rights advocates have traditionally proceeded with discretion, fearing reprisals from Dominican authorities.

An example of the need for caution can be found in the case of Father Edwin Paraison of the Episcopal Anglican Church, a leading advocate of the rights of Haitian and Dominico-Haitian sugarcane cutters in the Dominican Republic. Father Paraison was featured prominently in

the report on child labor in the Dominican sugar industry broadcast in May by the ABC-TV news program "Primetime Live," and testified before the U.S. House of Representatives in June. Thereafter he was the subject of harsh criticism by the Dominican state-run television station, and reportedly came under heavy surveillance by Dominican state security forces.

Previously, in 1988, Father Paraison had been summoned and interrogated by the G-2 intelligence service of the Dominican armed forces after complaining to the authorities that soldiers were arresting Haitian cane-cutters and extorting money for their release. Before that, in 1987, two Haitians who were active in organizing Haitian workers, and with whom Father Paraison worked closely, were killed. One was reportedly shot by Dominican soldiers when the two activists were on their way to a meeting of Haitian workers. The other, who fled but was being sought and eventually presented himself before the Santo Domingo police accompanied by a human rights lawyer — to whom assurances of the activist's safety were given — was detained and found hanged in his cell the following day. At that time, Father Paraison received phone threats saying that he "would be next."

The 1991 mass deportation of Haitians and Dominico-Haitians is avowedly President Balaguer's reaction to public criticism by domestic and international human rights organizations of the use of forced labor on Dominican state sugarcane plantations. "In light of the ominous campaign that has been unleashed against the [Dominican Republic] from outside," President Balaguer stated in June, "we had to make a decisive change, adopt the patriotic and irreversible determination to allow in our territory only those foreigners whom we would be able to maintain on Dominican soil....The rest will necessarily have to be repatriated." Although international human rights organizations have had unimpeded access to the Dominican Republic, such retaliation against the victims of abuse shows a contempt for international human rights reporting.

U.S. Policy

On April 25, after a two-year review of Dominican labor practices, the Bush Administration determined that the Dominican government "[has] taken or [is] taking steps to afford internationally recognized worker rights." As a result, the Administration decided to maintain trade benefits to the Dominican Republic under the Generalized System of

Preferences (GSP), despite a U.S. law that prohibits the granting of such benefits to countries that violate labor rights. That determination was made on the basis of a report, issued in April, by the GSP Subcommittee of the Office of the U.S. Trade Representative (USTR). The decision put an end to the review of Dominican labor rights practices by the USTR, Carla Hills.

The GSP Subcommittee's findings on the treatment of Haitian cane cutters were based at least in part on reports by the U.S. Embassy in Santo Domingo which purported to analyze labor practices on Dominican sugarcane plantations. The Bush Administration has yet to make these reports public. The failure to disclose the Embassy's reports raises questions about their quality and suggests that the Administration based its determination not on actual human rights conditions, as required by U.S. law, but on extraneous political considerations.

The GSP Subcommittee report covered a range of labor rights concerns in the Dominican Republic. In its section on "Allegations of Worker Rights Violations of Haitian Sugar Cane Cutters," it included a number of statements that tried to put the best face on what remains a deplorable human rights situation, particularly by overstating the effects of the October 1990 presidential decree.

For instance, in discussing the portion of the October 1990 decree that required written contracts to be given to all Haitian sugarcane workers, the subcommittee stated that "the act of registering Haitian workers and providing them written work contracts, when fully implemented, would remove a large measure of the social and legal uncertainty which can make them vulnerable to forced recruitment." While formally notifying Haitians of their rights is certainly to be encouraged, the fact remains that forced labor has long been formally illegal under both Dominican and international law, but that has not stopped the Dominican government from forcibly conscripting Haitians to work on sugarcane plantations. It is not legal or social uncertainty that has allowed the use of forced labor to flourish — Haitians undoubtedly know that it is unlawful to force them to work in the sugarcane fields — but the Dominican government's failure to enforce its own laws banning the use of forced labor.

Furthermore, it is meaningless to provide contractual guarantees of voluntary labor to Haitian recruits while they are being held against their will in Dominican military posts waiting to be taken forcibly to state sugarcane plantations. The armed guards holding them speak far more forcefully than the written prohibition of forced labor. Only *after* the

government's systematic use of forced recruitment is ended does the written contract become a meaningful guardian of the Haitians' rights.

In another statement, the GSP Subcommittee cited the U.S. Embassy in Santo Domingo to report:

There has been a marked reduction in the number and level of both private and public complaints of abuse in this area for the last two seasons....[I]ndividual complaints about small numbers of people forcibly recruited or deceived by private agents [continue to be reported], but in general...the problem [appears] significantly smaller.

By referring in vague terms to a "small number" of people forcibly recruited or to a problem that appears "significantly smaller," the Embassy's statement gives the impression of progress without any concrete substantiation. How many people were forcibly recruited, according to the Embassy? How much of an improvement does this represent over the prior year? The statement does not answer these questions, nor has the Bush Administration clarified these issues subsequently despite explicit requests from Congress. The assertions are particularly surprising since they follow excerpts of reports by Americas Watch and other human rights organizations which suggest that forced labor continues to be a serious problem on Dominican sugarcane plantations.

In its report, the GSP Subcommittee concluded, "Given the seriousness of the issue of forced recruitment and labor...the Subcommittee believed the situation should continue to be monitored closely in the future." However, twice the Bush Administration did just the opposite. In April, USTR Hills ended her review of Dominican labor practices when President Bush announced his decision to maintain GSP benefits. In August, the USTR rejected a new petition from Americas Watch requesting continued review of worker rights during the 1991-1992 season. In each case, USTR Hills missed an opportunity to continue to try to influence the Dominican government to cease its reliance on forced labor.

The USTR's refusal to accept the Americas Watch petition for ongoing review of Dominican labor practices was particularly disturbing in light of the Dominican government's rescision of one of the positive steps cited by the USTR to justify ending formal review. The GSP Subcommittee report relied upon by the USTR for her decision stated: "By legalizing the immigration status of Haitian workers...the [October 1990 presidential] Decree would remove the barriers which have stopped illegal immigrants from seeking legal protection of their worker rights as

provided for in the Dominican labor code." However, shortly after the USTR's decision, the Dominican government began its mass expulsion of Haitians, effectively rescinding the legalization provision of the October 1990 decree. Nonetheless, even after this reversal, the USTR refused to continue formal review of Dominican labor practices.

The Administration's decision to maintain GSP trade benefits was made seven weeks before the Dominican government announced its repatriation decree. The decision appears to have emboldened the Dominican government by giving it a seal of approval for promises rather than significant concrete steps to end labor rights abuses. That message was only reinforced two months later when, despite the mass expulsions, the USTR refused to accept an Americas Watch petition for further review.

The State Department's attempt to portray improvement in Dominican labor practices was no more convincing than that of the GSP Subcommittee. In prepared testimony on June 11 before House Subcommittees on Western Hemisphere Affairs and on Human Rights and International Organizations, Joseph Becelia, the director of the State Department's Office of Caribbean Affairs, did virtually nothing but tout five "meaningful steps" taken by the Dominican government to address labor rights concerns. The steps were later aptly summarized by Florida Representative Harry Johnston as: "the first one [step] is a commission, the second one is a decree, the third one is an announcement, the fourth one is an announcement, and the fifth one is an announcement." The strongest language Becelia used to describe ongoing forced labor in the Dominican Republic — after describing at some length each of the five "meaningful steps" — was: "notwithstanding this progress, we are concerned about continuing allegations that worker rights are not fully protected in the Dominican Republic." He went on to promise to continue to monitor worker rights in that country.

While the vows of the Dominican government to improve its labor rights practices represented important first steps toward respecting these rights, these promises were no substitute for the action required to eliminate forced labor altogether. As the State Department witness conceded in an exchange with Representative Robert Torricelli, chairman of the House Western Hemisphere Affairs Subcommittee, the steps taken by the Dominican government have not ended the Dominican Republic's dependence on forced labor.

Mr. Torricelli: Is it your judgment that Haitians are not at this moment being forced to do labor against their will in the Dominican Republic?

Mr. Becelia: No, I wouldn't want to draw that conclusion, Mr Chairman. I would not venture to make that opinion.

Mr. Torricelli: So is it your judgment that at this point children of a minor age are not being forced to do labor in the Dominican Republic?

Mr. Becelia: No, I would not subscribe to that hypothesis either. I would not say that this is not taking place, if that answers your question.

Mr. Torricelli: Of course, you would agree that basic labor rights are not being recognized, obviously.

Mr. Becelia: I would agree that there are abridgements of internationally accepted labor rights.

The Bush Administration's sole comment on the expulsions was in a report to Congress following the June 11 congressional hearings. The State Department said:

This report contains the U.S. Embassy in Santo Domingo's comments on the allegations of child slavery and other abuses of Haitian Braceros [canecutters] made in the May 30 ABC "Primetime Live" program. The Government of the Dominican Republic (GODR) strenuously denies the allegations, and in response to the ABC program and other international criticism, President Balaguer has ordered the repatriation of all undocumented aliens working in the sugar fields under age 16 and over age 60. Based upon our continuing review of the Bracero issue, we believe that the GODR does not have a policy of exploiting Haitian youths in slave-like conditions. To the contrary, the GODR is taking meaningful steps to curb abuses, although much remains to be done.

It is inexcusable that the Bush Administration blandly described the deportations without condemning the Dominican government's act of

responding to legitimate criticism of human rights abuses by retaliating against the victims of those abuses. Indeed, the Administration deceptively portrayed the deportations by repeating the decree's formula that they were directed against only Haitians under age sixteen and over age sixty, when in fact Haitians of all ages were arbitrarily detained and summarily expelled. The Administration's lack of criticism was undoubtedly understood by the Dominican government as tacit acceptance of the deportations.

By contrast, the House Subcommittees on Western Hemisphere Affairs and on Human Rights and International Organizations have taken an active interest in the plight of Haitian cane cutters in the Dominican Republic. For example, Chairman Torricelli made forceful statements at the June 11 hearing highlighting the unfortunate contradiction between the Bush Administration's acknowledgment that forced labor continues to be used in the Dominican Republic and its policy decision to remove the Dominican Republic from the GSP review process. Chairman Torricelli stated:

[I]f a message is going to be sent to the Dominican Republic, let it be this. I am not interested in good intentions, I am not impressed by any additional promises. There is not a person in this country who would want one dollar of our taxpayer's money to go to any government that condones any of these activities at any level.

As long as I am chairman of this subcommittee and able to muster a majority, it will never happen again, not a dollar. This next year is either going to witness the most remarkable progress in human relations in Dominican history, or it will mark the end of American assistance to the country.

In light of the Administration's abdication of any role in scrutinizing Dominican labor practices, Americas Watch urges Congress to follow up on its June inquiry and take appropriate steps to signal its displeasure, not only with continued forced labor in the Dominican Republic but also with the Dominican government's new policy of indiscriminate expulsions of Haitians. In addition to the cut in aid promised by Chairman Torricelli, we urge Congress to take steps to ensure that the Dominican Republic is not permitted to export sugar to the United States so long as it employs forced labor to harvest its sugarcane. Finally, we urge Congress to use its influence with the Bush Administration to encourage the USTR to resume her review of Dominican labor rights practices with

an eye toward denying GSP trade benefits, as required by U.S. law, unless the use of forced labor ceases.

The Work of Americas Watch

Americas Watch, together with the National Coalition for Haitian Refugees (NCHR) and Caribbean Rights, undertook two missions to the Dominican Republic in 1991. The first, in early-February, was a follow-up investigation of human rights and labor rights practices on Dominican state-run sugarcane plantations. The delegation conducted interviews with cane cutters at five plantations in three regions. The delegation also met with the Dominican secretaries of labor and migration, as well as with human rights advocates, church workers and trade-union activists.

In March, shortly after returning from the Dominican Republic, a member of the delegation met in Washington with representatives of the GSP Subcommittee of the USTR to report on the delegation's findings. Based on that mission, the three organizations published their third report on the Dominican Republic, *Half Measures: Reform, Forced Labor and the Dominican Sugar Industry*. The report was released in March and submitted to the USTR's office, which was to make its determination about GSP benefits to the Dominican Republic one month later.

On June 11, Americas Watch testified on the conditions of forced labor in the Dominican Republic before the House Subcommittees on Human Rights and on International Organizations, and on Western Hemisphere Affairs.

At the end of July, Americas Watch, together with the NCHR and Caribbean Rights, sent a second mission to document human rights abuses surrounding the massive, forced deportations of Haitians and Dominico-Haitians from the Dominican Republic. The organizations' representative met with the secretaries of labor and immigration, the director of the State Sugar Council and other government officials, as well as with Haitians and Dominico-Haitians residing in the Dominican Republic. A report on the mission will be released in early 1992.

ECUADOR

Human Rights Developments

Compared to many other Latin American countries, Ecuador is rarely the focus of scrutiny for its human rights practices. Rodrigo Borja Cevallos, who assumed the presidency in 1988, has expressed strong verbal support for human rights, and his government has granted domestic rights monitors significant access. Nonetheless, human rights abuses continue to be frequent, persistent and serious in this Andean nation.

The most systematic problem is torture and other physical mistreatment of common criminal suspects by agents of the National Police Criminal Investigative Service (SIC). In September 1991, an international commission investigating the January 1988 disappearance of two young brothers reported that torture and physical mistreatment are a routine aspect of SIC operations.⁴⁴ This finding confirmed long-standing allegations by local human rights organizations.

Until recently, the government had failed to explain the disappearance of the two brothers, Pedro Andrés and Carlos Santiago Restrepo Arismendi, ages fourteen and seventeen. They were last seen in public in Quito on January 8, 1988, when they left home in their parents' vehicle to see a friend off at the airport. Andrés Vallejo, former minister of government and police under President Borja, was censured in October 1990 by a majority of the National Congress for "having failed to act upon or take decisions that would have led to clarifying the arbitrary arrest, torture and disappearance of" the two minors.⁴⁵

After several failed attempts by Ecuadoran and international investigators to clarify the facts of the case, on July 13, 1990, President Borja created a Special (International) Investigative Commission, comprised of six individuals: Dr. Toine van Dongen, as representative of the United Nations; Dr. Gustavo Medina de López, attorney general of Ecuador; Dr. Apolinar Díaz Callejas, a former government official in

⁴⁴ "Informe Restrepo: Arrancados del Hogar," supplement to *Hoy* (Quito), September 4, 1991, p.5.

⁴⁵ *Andean Newsletter*, November 12, 1990.

Colombia and the founder of the Colombian Committee for the Defense of Human Rights; Dr. Juan de Dios Parra, secretary general of the Latin American Association of Human Rights; Dr. Isabel Robalino of the Ecuadoran Episcopal Conference; and Dr. Guillermo Arismendi Díaz, an uncle of the disappeared boys, representing the family.

On September 2, 1991, the commission released its conclusions: the Restrepo brothers disappeared at the hands of members of the National Police; the police were negligent in their efforts to investigate the case and some officers were involved in a cover-up; and although the bodies of the boys have not been found, they are dead. Central to the commission's findings was the testimony of former SIC agent Hugo Efraín España Torres, who revealed that the boys were tortured by SIC officials and that he collaborated in dumping their bodies in Lake Yambo, near Quito, during the night of January 11-12, 1988.

España has reportedly been in provisional detention since September 4, 1991. Also detained in connection with the case are: Guillermo Llerena, a former SIC agent; General Gilberto Molina, who retired from his post as general commander of the National Police on August 16, 1991; and Colonels Trajano Barrionuevo and Gustavo Gallegos, Captain Marcelo Valenzuela and Sub-Lieutenant Doris Morán, all of the police. In October 1991, Dr. Walter Guerrero, president of the Supreme Court, ruled that the case should be tried in civilian court. Human rights monitors in Ecuador believe that General Molina is likely to exercise his right under the Ecuadoran Constitution to be tried in a police court.

The Restrepo case is of historic significance in Ecuador. In addition to determining that SIC officials were responsible for the death of the two boys, the commission found that torture, arbitrary detention, and cruel, inhuman and degrading treatment are systematic SIC practices.⁴⁶ On the same day that the commission released its findings, President Borja abolished the SIC. Never before has the Ecuadoran government even implicitly acknowledged the institutionalized nature of human rights abuses committed by SIC agents or taken such a dramatic measure to curb abuses. Nor have so many officials or officials of such a high level been detained in Ecuador in connection with a human rights case. The case has lent unprecedented recognition and legitimacy to the cause of human rights in Ecuador. The resulting pressure of public opinion makes it likely that the case will be prosecuted vigorously.

⁴⁶ "Informe Restrepo: Arrancados del Hogar," p.5.

The armed forces also violate fundamental rights in Ecuador, though less frequently than the police. They have been implicated in cases of torture, homicide, illegal detention and physical mistreatment of common criminals and indigenous activists.

Rural violence also remains a serious problem in Ecuador. Rural land conflicts occur in large numbers in the eastern coastal and central mountain regions, and are the predominant context within which rural violence occurs. Although Americas Watch takes no position on who has the right to land ownership in these disputes, we are profoundly concerned about the violent consequences of these conflicts, the consistent failure of the state to punish those responsible for acts of violence, and the repression directed at the Ecuadoran indigenous movement.

In June 1990, the indigenous population in the Sierra participated in a three-day massive protest over land and other socioeconomic and cultural issues. A few months later, several landowners in the Sierra hired groups of armed men from the coastal province of Esmeraldas, ostensibly to serve as "security guards" for their rural property. Many of these men are former members of the armed forces; they dress in military uniforms and reportedly carry firearms issued only to the armed forces.⁴⁷

Abuses related to land conflicts are frequently committed during evictions by landowners and their "security guards," often in the presence of National Police officials. Beatings of indigenous community leaders and members are common, as are the burning of their homes and the destruction and theft of their property. From time to time, police and military officials play a direct role in evictions. "Guards" have also entered indigenous communities adjacent to the property they are protecting and subjected inhabitants to threats, theft, violence and destruction.

Two indigenous activists were killed in 1991. Julio Cabascango, human rights officer of the Indigenous and Peasant Federation of Imbabura (FICI), was knifed to death in the community of Huaycopungo, province of Imbabura, on March 31. Members of the community allege that the assailant was a hired guard from the neighboring hacienda. According to the Confederation of Indigenous Nationalities of Ecuador, Virgilio Ganzino was shot to death on September 21 by landowner Washington Albán. The killing took place in the community of Churo Lozán, the province of Cotopaxi, while Ganzino was on his way to a

⁴⁷ Eduardo Tamayo, "Chronicle of a Reported Death," *Punto de Vista*, as reported in Foreign Broadcast Information Service, May 31, 1991, page 35.

meeting about a local bilingual education program.

Minister of Government and Police César Verduga told Americas Watch in a July 14 interview that the armed guards fill a gap in a country which has 15,000 police officials but requires 45,000. Verduga indicated that at no time has the government contemplated the dismantling of such groups. On the contrary, he intends to "control their existence" with government regulations requiring them to function as employees of a legally constituted security company, to submit *curricula vitae* to the government, and to use specified firearms and uniforms.

What is missing, in our view, is a commitment by the government to end the impunity exercised by some landowners and their guards for violent abuses against peasants. Americas Watch is concerned that the government is tolerating, rather than punishing, the abuses committed by landowners and their hired guards. We are aware of no cases in which landowners or their guards have been convicted for the violence regularly committed against peasants or indigenous activists.

Repression against the indigenous population has also taken the form of illegal detention (without warrant and not during the commission of a crime) and arrest based on false charges levied by landowners against community members and leaders. This problem reflects the level of influence landowners enjoy at a local level over the police and judiciary. Indigenous detainees have on several occasions been subject to torture or other physical mistreatment.

The Right to Monitor

The government does not significantly impede the right to monitor human rights in Ecuador, and government officials display a cordial and open attitude toward prominent human rights activists. Since 1988, a nationwide network of human rights organizations has begun to take root. Investigations by international human rights organizations are allowed, and in July 1991, Americas Watch enjoyed access to high-level government officials during the course of an investigation.

U.S. Policy

The United States and Ecuador collaborate on a number of anti-narcotics measures. In fiscal year 1991, the State Department's Bureau of International Narcotics Matters (INM) provided \$1.5 million for anti-narcotics equipment and training by U.S. personnel for the Ecuadoran Army, National Police and Military Customs Police. According to an INM trainer interviewed by Americas Watch, training in Ecuador is related strictly to law enforcement techniques and does not address human rights.

According to the Pentagon, Ecuador received \$800,000 in International Military Education and Training funds in fiscal year 1991. In addition, Ecuador received approximately \$14 million in development assistance from the U.S. Agency for International Development. Unlike past years, Ecuador did not receive Economic Support Funds in 1991. Several U.S. officials attributed this change to Ecuador's low priority for the United States and limitations in State Department resources.

Ecuador enjoys a favorable trade relationship with the United States. In the first six months of 1991, ninety-four percent of Ecuador's imports to the United States were eligible for reduced tariffs under the Generalized System of Preferences, up from eighty-six percent in 1990. Ecuador is also in line to receive trade benefits under the Andean Trade Preference Act if the legislation is passed by the U.S. Congress.

Despite these economic and military links to Ecuador, the Bush Administration was conspicuously silent on human rights abuses in Ecuador in 1991. State Department officials claimed that human rights concerns are raised as part of the regular dialogue with Ecuadoran officials, but declined to provide a single example of when that had occurred.

The Ecumenical Commission for the Defense of Human Rights, in Quito, reported that although they are contacted each year by the U.S. Embassy's human rights officer, the bulk of the information they provide is excluded from the chapter on Ecuador in the State Department's annual *Country Reports on Human Rights Practices*. While the report on 1990, published in February 1991, made reference to pervasive discrimination against the indigenous population, it gave almost no information about rural violence or repression of the indigenous movement. Furthermore, while the report made blanket statements about the persistence of arbitrary detention, torture and other mistreatment of common criminals, the statements were bland and excluded cases that would have effectively illustrated the gravity of the abuses.

The Work of Americas Watch

In July, Americas Watch sent a researcher to Ecuador to assess the overall human rights situation and to investigate rural violence related to land conflicts and the indigenous population. The representative interviewed leaders of indigenous organizations, victims of abuses and local human rights monitors, and met with government officials, members of the Ecuadoran Congress and representatives of the U.S. Embassy. She also visited several indigenous communities where violent evictions had taken place.

EL SALVADOR

Human Rights Developments

Nineteen ninety-one saw a number of advances in respect for human rights in El Salvador. A unilateral truce declared by guerrillas of the Farabundo Martí National Liberation Front (FMLN) in November could be a prelude to a final cease-fire agreement, ending over a decade of brutal civil war. U.N.-mediated peace talks between the government and the FMLN produced several agreements which, if fulfilled, could transform the political landscape inside the country. In April, government and rebel negotiators agreed to establish a nonjudicial "Commission on Truth" to investigate major human rights cases over the past decade and make recommendations for their resolution; in mid-December, U.N. Secretary General Javier Pérez de Cuéllar appointed the three members of the Commission on Truth and announced that it would begin its work in 1992.⁴⁸ In September, the two sides agreed in principle to reduce the size of the armed forces, eliminate two of the security forces most known for human rights atrocities — the Treasury Police and the National Guard — and create a new police force under civilian control that would

⁴⁸ Those named were Belisario Betancur, former president of Colombia, Reinaldo Figueredo, former foreign minister of Venezuela, and Thomas Buergenthal, president of the Inter-American Institute for Human Rights.

be open to FMLN combatants. Negotiators agreed to establish an *ad hoc* commission to examine the records of senior officers with an eye toward purging human rights violators after a settlement.

More concretely, the United Nations launched in July an unprecedented effort to monitor human rights amidst the ongoing military conflict. With over one hundred observers (including thirty-one military and police advisers) and six regional and subregional offices, the United Nations Observer Mission in El Salvador (ONUSAL) is positioned to have a major impact on the observance of human rights in the country.⁴⁹

Since the arrival of ONUSAL, both the armed forces and the FMLN appear to have taken greater care to avoid civilian casualties. In part, this can be attributed to the mission's deterrent effect; it can deploy its personnel anywhere in the country without prior notice, and visit prisons unannounced. However, the most important challenge facing ONUSAL remains that of encouraging the development of governmental institutions that have an interest in and responsibility for safeguarding human rights.

In many respects, however, the human rights situation remained grim, characterized by the steady diet of assassinations, abductions and violations of the laws of war to which the world has sadly grown accustomed over the last decade. There were fewer targeted political killings in 1991 than in the past, and greater freedom to organize politically. Nonetheless, the army and security forces remained responsible for numerous cases of torture, illegal detention, and indiscriminate attacks on the civilian population. Corpses mutilated beyond recognition continued to appear along roadsides or were dumped in local cemeteries, suggesting ongoing activities of death squads. Beginning in late May, a new group, the Salvadoran Anti-Communist Front (FAS), issued several death threats against international humanitarian organizations and political activists, and appears to have been linked to the assassination of a trade unionist late in the year. ONUSAL and several members of the international press corps received

⁴⁹ ONUSAL was established pursuant to a July 26, 1990 Agreement on Human Rights (known also as the San José Accord) between the Salvadoran government and the FMLN. ONUSAL was originally designed to monitor human rights only after a cease-fire, but a consensus quickly emerged in Salvadoran society that it should set up office earlier.

written threats from FAS in November, as tensions related to an approaching cease-fire agreement rose.⁵⁰ The government pledged to investigate the FAS, but so far has come up with nothing.

The FMLN also committed serious violations of international humanitarian law, murdering two wounded U.S. servicemen, engaging in indiscriminate attacks that endangered or took civilian lives, and kidnapping and murdering civilians. Although the FMLN pledged to conduct a trial of two combatants it detained for the murder of the two U.S. advisers, it had yet to do so almost a year after their deaths. The delay raised serious questions about the FMLN's commitment to eradicate impunity within its own ranks.

Fighting throughout the country increased in mid-1991, as both the army and the FMLN attempted to enhance their positions in the U.N.-brokered talks prior to a cease-fire. War-related violations by the armed forces, including indiscriminate attacks and summary executions, rose as a result. However, human rights abuses were only partly related to the rhythm of the war; as in the past, they continued to occur because of the impunity enjoyed by those responsible for attacks on unarmed civilians.

Although the late-September conviction of an army colonel and one of his lieutenants for the 1989 murders of six Jesuit priests, their housekeeper and her daughter was the first successful prosecution of a senior officer for a human rights violation, it is too early to say whether the verdict represents a break with impunity for high-ranking military abusers of human rights. An indication that the prosecution in the Jesuit case may have stopped short of senior military levels came in late November, when U.S. Representative Joe Moakley, chair of the Speaker's Task Force on El Salvador, announced that, according to his sources, high-ranking officers, including the current Minister of Defense, had participated in the meeting in which the decision to murder the Jesuits was made.

On March 10, 1991, El Salvador held municipal and legislative elections which were preceded by more election-related political violence than had accompanied the presidential elections of 1989. This increase occurred despite the FMLN's restraint from carrying out military actions on and near election day. In late February, heavily armed men riding in a pick-up truck assassinated a candidate from the leftist Nationalist

⁵⁰ The far right reacted strongly to progress in the peace talks, accusing President Cristiani and ARENA president Armando Calderón Sol of treason.

Democratic Union (UDN) along with his pregnant wife. Just days before the election, another UDN candidate was shot and wounded when a caravan of vehicles from the ruling Nationalist Republican Alliance (ARENA) party opened fire on campaign workers putting up posters. The Usulután offices of the Democratic Convergence, a coalition of left-of-center parties, suffered a grenade attack in late January; the offices were located two blocks from the Sixth Infantry Brigade, which is well guarded. Official investigations of these murders and attack have yielded no suspects and are going nowhere. In addition, in early February, the offices of the left-of-center daily *Diario Latino* were burned to the ground. The investigation has focused on internal squabbles at the paper and the theory that the plant was set afire by its own workers, largely ignoring the possibility that arson was committed by persons hostile to *Diario Latino's* political perspective. Despite this violence, leftist political parties scored unprecedented victories at the polls, picking up nine seats in the Legislative Assembly as the ARENA party lost its majority.

Throughout the year, opposition politicians and members of church and grassroots organizations representing peasants, women and repatriated refugees were subjected to death threats, detention, surveillance and break-ins. Some of the more notorious episodes from the months of June and July alone include the following:

- o In June, Legislative Deputy René Flores of the social democratic National Revolutionary Movement (MNR) received an unsigned letter in a Treasury Police envelope warning that he and his family would be killed. Two other MNR leaders received telephone death threats from someone who called himself the "Angel of Death." In July, two grenades were thrown at the entrance of the MNR headquarters as party activists entered the premises.
- o In early July, the *Pequeña Comunidad* (Small Community) of lay religious women was forced to abandon its residence after repeated threats and a break-in. The women received five telephone threats between July 2 and 5 accusing them of being guerrillas and warning them that they were being watched. On July 6, in broad daylight, the house was ransacked and 40,000 *colones* (\$5000) destined for marginal communities was stolen. Telephone threats against two of the community's members continued through October.

- o In mid-June, agents of the Treasury Police and National Police arrested without a warrant twenty-seven members of the Salvadoran Association of Integral Development (ASDI), a legally incorporated group which provides technical training to peasants. The twenty-seven were accused of "subversive association." The police ransacked the training center, destroying and stealing equipment and vehicles. After six days of illegal detention, a justice of the peace ordered the release of the detainees for lack of evidence.

Further threats against popular groups and international organizations were issued by the Salvadoran Anti-Communist Front. Beginning in May, the FAS threatened "sanctions" against businesses and individuals (and their families) who serve members of such organizations as the United Nations, the International Committee of the Red Cross, the U.N. Observer Group for Central America (ONUCA), and the private Doctors Without Borders and Doctors of the World. As the human rights monitoring team ONUSAL prepared to commence operations in July, the FAS threatened to "let loose a truly bloody civil war" if "internationalists" were forced on El Salvador. Other FAS communiques were directed at the left-wing National Unity of Salvadoran Workers (UNTS); members of the National Association of Salvadoran Educators (ANDES); Mirtala López, an activist with the Christian Committee for Displaced Persons of El Salvador (CRIPDES); and members of the Construction Workers' Union. At least one of those threats appears to have been carried out. In late September, weeks after death threats to the construction union's secretary general, the body of another unionist, Miguel Angel Martínez Vásquez, was thrown on a main thoroughfare in downtown San Salvador. The body bore signs of torture and had four bullet wounds in the head.

A spate of kidnappings of wealthy Salvadorans also rocked the capital beginning in March and April, eliciting strong protests from the business community and leading to speculation that a mid-1980s kidnapping-for-profit ring run by active-duty and former members of the military might be back in business.⁵¹ The Chamber of Commerce blamed the "impunity and tolerance that the guilty enjoyed in the past" and called for

⁵¹ In early April, Salvadoran Channel 12 television reported that seventeen businessmen or their relatives had been kidnapped, for ransoms as high as one million dollars.

greater protection for members of the private sector.⁵² Two prominent ARENA members, industrialist Guillermo Sol Bang and landowner Gregorio Zelaya, were kidnapped in July. The FMLN admitted holding Zelaya and released him in August; Sol Bang had not been released as of late 1991 and his captors remain unknown.

The military launched a sustained offensive in rural areas beginning in June. It moved into zones long under FMLN control as a way of disputing the guerrillas' claim to control territory, a key issue in the cease-fire talks. Because humanitarian workers were regularly denied access to rural areas (even in instances in which permission to travel had been worked out in advance with local military commanders) and journalists had only sporadic access, information on what took place during those operations is sketchy. However, available evidence demonstrates that some military actions have been aimed directly at civilians living in conflict zones, apparently to punish them for presumed guerrilla sympathies. In other cases, especially when engaging guerrilla forces in or near the civilian population, the military was responsible for civilian casualties as a result of indiscriminate attacks and excessive use of force.

Two examples are illustrative of the military's disregard for civilians living in conflict zones:

- o On August 17-18, army troops streamed into the town of Ciudad Segundo Montes, in Morazán, where approximately 8,400 refugees have resettled. Although no guerrillas were visibly present, soldiers shot randomly at civilian houses and fired grenades and mortars. Nine civilians were wounded by bullets or flying shrapnel, six were beaten, and twenty-three were overcome by tear gas. At least seven homes were damaged and hundreds of chickens killed. In a report on the incident, ONUSAL concluded: "There is no decisive evidence that armed members of FMLN were in the community at the time of the incidents. Everything would seem to indicate that the purpose of the military actions was to intimidate the civilian population in order to

⁵² Chamber of Commerce paid announcement, *La Prensa Gráfica*, April 4, 1991.

facilitate a military operation in northern Morazán.⁵³

- o On September 3, a nine-month-old girl, Maira Norelvis Salazar Hernández, was killed and two others wounded in San José Las Flores as a result of firing and mortaring into the community by government soldiers. Although FMLN guerrillas were likely to have been present in the village at the time of the attack, the casualties indicate that the military fired indiscriminately and without sufficient concern for the civilian population.

Americas Watch has received information that on other occasions members of the military violated the laws of war by taking over the porches of civilian homes to set up defense positions; detaining civilians illegally and then forcing them to accompany troops during military operations; and bombing civilian areas long after battles with the FMLN were over. In one bombing episode in April, two civilians were killed. In another serious violation of the laws of war, the respected Salvadoran human rights organization Tutela Legal reported that in May soldiers of the Atlacatl battalion executed a wounded guerrilla they had captured and then mutilated the corpse. The soldiers boasted to local residents that they had killed a wounded guerrilla who was going to die anyway.

The FMLN was responsible for several summary executions and other abuses in 1991, perhaps none so infamous as the January 2 execution of two wounded U.S. servicemen after their helicopter was shot down over eastern El Salvador. Private First Class Earnest Dawson and Lieutenant Colonel David Pickett survived the crash and were executed by FMLN combatants shortly thereafter. A third U.S. serviceman, Chief Warrant Officer Daniel Scott, died of wounds sustained in the crash.

After issuing two false reports about the circumstances of the servicemen's death, the FMLN announced on January 18 that it had detained two of its combatants for the murders and pledged to start a "clear and impartial" judicial process against them.⁵⁴ Meanwhile, the

⁵³ ONUSAL, "First Report of the United Nations Observer Mission in El Salvador," September 16, 1991, p. 22.

⁵⁴ The communique said that a rebel named "Porfirio" had carried out the executions, under orders from subzone commander "Domínguez." However, two investigators from the Catholic Church who interviewed members of the rebel

Salvadoran government challenged the FMLN's right to try the defendants and demanded that they be turned over to the Salvadoran judicial system. Supreme Court President Mauricio Gutiérrez Castro warned that any foreigner or Salvadoran national participating in a tribunal to judge the guerrillas would be subject to criminal proceedings under Salvadoran law.

Because Americas Watch requested the chance to observe any FMLN trial that might take place, we had numerous exchanges with the FMLN over the course of the year.⁵⁵ After hearing several times as early as March that the trial would begin soon, Americas Watch was told in early August that, although the FMLN had "defined the structure" of the tribunal to carry out the trial, it had decided to turn the servicemen's case over to the Commission on Truth. In a letter to the FMLN, Americas Watch expressed "disappointment" that the FMLN had not made more progress in fulfilling its obligations under international law to punish gross abusers, particularly since the commission had yet to be established and, in any event, it will not be empowered to try and convict people.

Meanwhile, in mid-July, a federal grand jury in Washington returned a four-count indictment against "Porfirio" for the murder of the two servicemen. The indictment was brought under the 1986 Omnibus Diplomatic Security and Anti-Terrorism Act, which expands U.S. criminal jurisdiction to cover terrorist attacks against U.S. citizens overseas.

In late September, the FMLN notified Americas Watch that it had asked the Swiss government to detain the two accused on its territory, pending the inauguration of the Commission on Truth. The FMLN also notified Salvadoran Justice Minister René Hernández Valiente that it would turn the accused over to the Salvadoran government when judicial

unit in early February were told that a rebel named "Aparicio" was in charge. The discrepancy has not been explained.

⁵⁵ Americas Watch also had a lengthy exchange with the U.S. State Department, which complained that observation of the trial would lend it legitimacy. We explained that our position regarding the FMLN's obligation to investigate and punish crimes committed by those within its ranks was identical to the position that the State Department had taken in the mid-1980s regarding abuses by the *contra* rebels in Nicaragua. The rationale for wanting to observe -- to ensure that a grave violation of the laws of war did not go unpunished and that the accused received a fair trial -- were also explained to President Cristiani.

reforms agreed upon in the talks had been fully implemented.

Americas Watch is concerned that, despite what appear to have been initial good-faith efforts to investigate the case, the FMLN's repeated delays represent an inability or an unwillingness to provide timely justice for the accused.

Other notable examples of FMLN abuses in 1991 include the following:

- o On May 22, the FMLN launched a mortar attack on the First Brigade garrison in San Salvador in which three civilians were killed and others wounded. Only one of the seven mortars fired reached its target, with the rest falling on civilian houses in a heavily residential neighborhood. The use of such inaccurate means, even against a military facility, amounts to an indiscriminate attack in violation of the laws of war. Two more civilians were wounded in another indiscriminate attack on the First Brigade on May 28.
- o After denying responsibility, the FMLN admitted on August 5 that it had kidnapped wealthy landowner Gregorio Zelaya. It later accused him of organizing death squads and sought to justify the abduction as a means of compelling payment of a "war tax." Zelaya was released on August 24 to representatives of the church, apparently through the good offices of ONUSAL. In addition to violating the laws of war, the kidnapping violated the 1990 San José human rights accord, which committed the guerrillas and the Salvadoran government "to avoid any act or practice which constitutes an attempt upon the life, integrity, security or freedom of the individual."

Nineteen ninety-one distinguished itself as a year in which the judicial system produced incomplete or thoroughly unjust outcomes in a number of prominent cases, including the Jesuit case. The investigations of two new crimes — the murders at El Zapote and at the offices of the Council of Marginal Communities (CCM) — were woefully inadequate in exploring possible complicity by the armed forces. As the following examples illustrate, the judicial system, including the U.S.-funded Special Investigative Unit (SIU), seems most efficient when it is protecting

members of the military from the consequences of their own crimes.⁵⁶

- o On January 21, several armed men stabbed or shot to death fifteen men, women and children, all from the same extended family, in the town of El Zapote, on the outskirts of San Salvador. Within weeks of the massacre, the SIU announced that the motive for the crime was a family dispute and named three prime suspects, two of them former members of the military and one a deserter from the civil defense force. The three men were arrested in late February, along with two women alleged to be the intellectual authors of the murders. Based on court records and interviews with survivors, Americas Watch believes that the murders could have resulted from a family feud. However, the government's investigation never seriously considered the possibility of military involvement, and on occasion actively sought to dismiss it. A memo from the First Brigade, which patrols the area, stated that "it is dismissed that our units are involved in said killings." The military has been slow to cooperate with judicial authorities, stonewalling on a justice of the peace's request to identify troops operating in the area of El Zapote or to provide logbooks of troop movements. Judicial authorities themselves appear to have avoided leads pointing to the armed forces. For example, an investigating judge tried to persuade one of the survivors of the massacre to change her testimony after she stated that the men who killed her family were soldiers dressed in camouflage green.
- o Martín Ayala Ramírez, a CCM nightwatchman, was found hacked to death and bound hand and foot to a post in the CCM's offices on July 8. His wife, Leticia Campos, was found stabbed and unconscious, but survived the attack. Many suspected National Police involvement in the break-in and murder because the crime occurred only days after members of the National Police forcibly evicted families belonging to the CCM from vacant lots that they had occupied in the capital. On August 6, the armed forces announced the detention of

⁵⁶ In one departure, a court sentenced three men in May for their participation in the June 1985 murder of thirteen people, including four off-duty U.S. Marines, at a sidewalk café in San Salvador's *Zona Rosa*. The attack was carried out by the FMLN.

two suspects, José Luis Anaya and Gilberto Antonio Contreras, who appeared on television and radio broadcasts confessing to the crime, claiming robbery as a motive. A third suspect, former CCM worker Marta Contreras, was arrested in early September and is alleged to have been the intellectual author of the crime. While it appears plausible that the three detained were involved in the crime, anomalies in the investigation and judicial process suggest that a different motive that would implicate further suspects may have been behind the killing.

- o On October 9, 1991, a Salvadoran jury acquitted thirteen members of the civil defense force of the July 30, 1981 murder of seven civilians in the town of Armenia, Sonsonate. The charges arose from the murder of approximately two dozen members of a local soccer team, apparently after a dispute with soldiers at a military roadblock. The bodies of some of the victims were dumped into a well and others were found in a nearby river.⁵⁷ An excavation of the well in May 1986 organized by the governmental Commission on Investigations yielded the identifiable remains of four people. Sufficient evidence to bring murder charges was ultimately gathered on seven victims. After hearing only the first round of defense arguments on October 9, 1991, the jury abruptly acquitted all thirteen defendants, some of whom had confessed to having participated in the murders. Troops from Sonsonate's Sixth Military Detachment were in plain view surrounding the courthouse, and the jurors sat in full view of the defendants. Within days of the verdict, the attorney general's office protested the ruling and petitioned to have it annulled, citing provisions of El Salvador's criminal code that allow for dismissal when "one or more votes which decided the verdict were obtained by bribery, intimidation or violence."⁵⁸
- o On October 12, 1991, a jury convicted Jorge Miranda Arévalo for the 1987 murder of Herbert Anaya, the outspoken head of the non-governmental Human Rights Commission of El Salvador (CDHES-

⁵⁷ Lawyers Committee for Human Rights, *Underwriting Injustice*, 1989.

⁵⁸ Central American University Institute for Human Rights (IDHUCA), *Proceso*, No. 491, October 16, 1991.

NG). The Salvadoran government based its case against Miranda on a confession obtained during twelve days of illegal *incommunicado* detention by the National Police. In the confession, Miranda claimed to have acted as a lookout for members of the People's Revolutionary Army (ERP) guerrilla group who murdered Anaya. The charges of FMLN involvement in Anaya's assassination were announced by then-President José Napoleón Duarte in a January 1988 press conference. Within weeks of the government's announcement, Miranda recanted his confession. While admitting to being a member of the ERP, he said that he had been coerced and given three injections while in police custody. First Criminal Court Judge Luis Edgar Morales dismissed the murder charge for lack of evidence, but his decision was overturned by an appeals court more sympathetic to the government's case.⁵⁹ Miranda's defense lawyers have indicated that they will petition for an annulment of the conviction.

The most visible example of partial justice came in the case of the Jesuit murders. On September 28, 1991, a five-person jury convicted Colonel Guillermo Alfredo Benavides of murder in the 1989 deaths of six Jesuit priests, their housekeeper and her daughter. Lieutenant Yussyh René Mendoza Vallecillos, who oversaw the operation on the campus of the Central American University, was convicted solely of the murder of fifteen-year-old Celina Mariceth Ramos. All seven other defendants were acquitted, including the lieutenant who received the order to kill the Jesuits and the private, Oscar Amaya Grimaldi, who confessed to having murdered three of the priests and then retiring to their kitchen to drink a beer.⁶⁰

The jury's verdict, for the first time in Salvadoran history, affixed responsibility for a human rights crime on a senior commander. At the same time, it sent the bizarre message to Salvadoran troops that they

⁵⁹ Following Judge Morales's dismissal of the murder charge, he was demoted and transferred to another court. He fled the country in 1991 after a bombing attempt on his life.

⁶⁰ As of mid-December, neither of the two convicted officers had been sentenced. The judge was also due to rule on lesser charges -- destruction of evidence, conspiracy to commit acts of terrorism, and perjury -- involving other soldiers as well as those convicted and acquitted.

could kill with impunity as long as they claimed to be following higher orders.⁶¹ The irrationality of the verdict — which allowed triggermen to go free and convicted a junior officer for a murder he did not commit — itself suggested a fix. Representative Moakley refused to rule out this possibility when he called for a probe into evidence that one of the defendants who was found not guilty had threatened to implicate other senior officers unless he were acquitted.⁶²

Following the trial, Moakley fueled the long-held suspicion that Colonel Benavides did not act alone in ordering the Jesuit murders. Citing what he called "experienced, respected, and serious" sources in the armed forces, Moakley reported in a November 18 statement that "the decision to murder the Jesuits was made at a small meeting of officers held at the Salvadoran Military School on the afternoon prior to the murders." Those present at the meeting included the current minister of defense, General René Emilio Ponce; his vice-minister, General Orlando Zepeda; the head of the First Brigade, Colonel Francisco Elena Fuentes; and the former head of the air force, General Juan Rafael Bustillo. According to Moakley, "the initiative for the murders came from General Bustillo, while the reactions of the others ranged from support to reluctant acceptance to silence."

The Salvadoran High Command rejected the charges. But the behavior of the armed forces during nearly two years of official investigation — ranging from destruction of evidence to perjury to professed amnesia — gave Moakley's accusations the clear ring of truth.

In ways large and small, 1991 saw a continuation of official obstructionism in the case. On January 8, two government prosecutors resigned from their posts, protesting the attorney general's interference in their investigation. They later went to work for the Jesuits. In mid-February, the High Command sent a letter to the justice minister, ostensibly requesting further investigation of mid-level officers to

⁶¹ Cynthia Arnson, "Bizarre Justice in El Salvador," *The New York Times*, October 3, 1991.

⁶² Joe Moakley, "Justice Disserved in El Salvador," *The Washington Post*, October 14, 1991.

"establish the truth in this delicate case."⁶³ In fact, all but three of the officers had already testified,⁶⁴ and the High Command in the letter specifically ruled out institutional responsibility for the murders. "We are clearly assured," they stated, "that institutional responsibility in this case does not exist." In May, Defense Minister Ponce threatened to sue the Jesuits' lawyers for libel after they filed a court document charging members of the High Command with either having authorized the massacre or presiding over a "collective criminal enterprise" in the heart of the armed forces.⁶⁵ The judge in the case, Ricardo Zamora, rejected numerous requests by the Jesuits' lawyers to call additional senior officers for questioning or to request further documentation from official sources,⁶⁶ apparently viewing attempts to obtain the military's cooperation as futile.

The Right to Monitor

Throughout 1991, the ability to monitor human rights in El Salvador was severely curtailed by restrictions on freedom of movement for journalists and church and humanitarian workers. The military regularly restricted access to conflict zones, inhibiting the delivery of humanitarian supplies as well as the flow of information. While direct attacks on human rights monitors were rare, an Americas Watch board member was present at one serious incident in May in which troops fired shots at the feet and

⁶³ Investigators for the Moakley Task Force in January called the failure to investigate officers in the chain of command between the colonel and the enlisted men who were charged in the case "the most puzzling aspect of the investigation," and speculated that the military hierarchy "controlled who was questioned, who was detained, and who was charged." Memorandum from Jim McGovern and Bill Woodward to Hon. Joe Moakley, January 7, 1991, pp. 5 and 7.

⁶⁴ Lawyers Committee for Human Rights, "Update on Investigation of the Murder of Six Jesuit Priests in El Salvador," March 25, 1991, p. 2.

⁶⁵ "Nota Informativa para la Prensa," May 6, 1991, San Salvador, p. 3 (Document prepared by the two private prosecutors for the Jesuits).

⁶⁶ Lawyers Committee for Human Rights, "Jesuit Murder Case Update," August 1991, p. 2.

over the heads of a delegation of the Commission for the Defense of Human Rights in Central America, which was attempting to visit repatriated communities in Morazán.

In addition, CDHES-NG reported illegal searches of two of its members' homes, one by uniformed police and another by men in civilian dress, in August and September. Another former member of CDHES-NG was arrested and interrogated by the National Police in September. Following four death threats in September by the FAS, Mirtala López, secretary for human rights and legal affairs of CRIPDES, fled the country. She has since decided to return.

U.S. Policy

Despite Congress's decision in 1990 to withhold fifty percent of El Salvador's military aid as a protest over the Jesuit murders, the Bush Administration was reluctant to deviate from the long-standing U.S. policy of support for the Salvadoran armed forces. The Administration did go on record — at times in conjunction with the Soviet Union — in favor of a negotiated settlement to the Salvadoran conflict. But its selective application of U.S. law to enable it to restore military aid sent mixed messages and squandered precious resources that could have been used to press the armed forces to prosecute all those responsible for the Jesuit murders.

For example, less than two weeks after the FMLN's murder of two wounded U.S. servicemen, the Administration announced that it was restoring the aid frozen under the 1990 law. According to President Bush's January 15 determination, the FMLN was continuing to receive significant shipments of weapons from abroad and had engaged in violence against civilian targets during a late 1990 offensive.⁶⁷ The Administration did not cite numerous acts of violence against civilians by the Salvadoran government which had been documented even in the

⁶⁷ For example, the 1990 (fiscal year 1991) law required aid to be cut in full if the government failed to conduct a thorough investigation of the Jesuit murders, failed to negotiate in good faith during the peace talks, or engaged in abuses against civilians. Conversely, the President was authorized to restore aid in full if the FMLN failed to negotiate in good faith, received sophisticated weaponry from outside the country, or engaged in abuses against civilians.

State Department's own annual human rights report to Congress. The justification did not directly mention the FMLN's murder of the servicemen, but that incident provided an opening for the Administration to restore aid while criticism of the FMLN was at its height.

To its credit, the Administration did not actually release any of the aid for several months.⁶⁸ Then, on June 27, shortly after a visit to Washington by Salvadoran President Alfredo Cristiani, the Administration announced that it was releasing \$21 million, or half of the withheld aid, to purchase spare parts and "non-lethal" equipment such as medical supplies and rations. The Administration hoped to blunt congressional criticism by pledging that none of the aid would go for arms and ammunition, studiously avoiding mention that about eighty million dollars of undisbursed military aid from previous years remained in the pipeline and was available for expenditure on lethal items.⁶⁹ The quantity of pipeline aid meant that the release of the \$21 million was done for political and not security reasons.

Frustration over the ease with which the Administration undermined congressional efforts to condition aid as an incentive for military reform in areas of peace and human rights led to several efforts in the House and Senate to tighten aid restrictions for fiscal year 1992. The House, after twice postponing votes at the Administration's request to avoid interference with the U.N.-brokered negotiations, failed to schedule a vote on El Salvador aid conditions.

An effort in the Senate, led by Senators Christopher Dodd and Patrick Leahy, to include pipeline aid in the fifty percent withheld from fiscal year 1992 funds and to give Congress a role in deciding whether aid should be released, resulted in a standoff. The Senate defeated, 56 to 43, an amendment to remove the Dodd-Leahy proposal from consideration. In a rebuff to the Administration, five Republicans defied telephone calls from President Bush and Secretary of State James Baker and voted not to end discussion of the aid question. Republican Senator John McCain then began a filibuster. Senators Dodd's and Leahy's attempt to end the filibuster fell eight votes short of the two-thirds majority needed to invoke

⁶⁸ To soften criticism, the Administration had said that it would not release the aid for sixty days, to encourage a negotiated settlement of the war.

⁶⁹ *Congressional Record*, June 27, 1991, p. S 8916 (remarks of Senator Patrick Leahy).

cloture.

The year-end Continuing Resolution appropriated funds for the first six months of fiscal year 1992, based on the levels and conditions of the previous year. In a letter to House Foreign Operations Subcommittee Chairman David Obey, Acting Secretary of State Lawrence Eagleburger pledged to release aid at the rate of \$3.5 million per month unless there was "a radical change in the military situation in El Salvador." A vote on the remaining portion of aid is expected in early 1992.

U.S. actions on the Jesuit case complimented the efforts of the Salvadoran military to limit the scope of the investigation. On the record, the State Department insisted that "neither the Salvadoran government, nor the United States government, will tolerate any attempted coverup."⁷⁰ But the United States continued to withhold from the judge a videotape of U.S. military adviser Major Eric Buckland's 1990 interview with the U.S. Federal Bureau of Investigation (FBI), in which he discussed advance knowledge of a plot to kill the Jesuits.⁷¹ A transcript was finally turned over to Judge Zamora in May 1991, revealing a confused and often inarticulate Buckland who was willing to tolerate human rights violations to win the war and accepted the murder of the priests because Central American University Rector Ignacio Ellacurfa was "dirty."⁷²

The United States cooperated to a limited extent with a request by Judge Zamora for depositions of nine U.S. citizens with knowledge about the case. Over the summer, under a process known as letters rogatory, the U.S. Justice Department deposed six former U.S. military advisers and two former Embassy officials, as well as Major Buckland's sister. However, the State Department refused to allow lawyers for the Jesuits to be present, thus limiting the information that might be elicited. The

⁷⁰ Richard Boucher, State Department briefing, March 13, 1991.

⁷¹ See Americas Watch, *El Salvador and Human Rights: The Challenge of Reform*, 1991, pp. 77-80.

⁷² Transcript of the Video Declaration of Major Eric Warren Buckland, January 12, 1990, Washington, D.C., pp. 7, 8, 11, 12 and 15. Another U.S. adviser interviewed by the FBI, Major Samuel Ramírez, also stated his belief that the Jesuits "were actively involved in soliciting the people to take up arms against the government." See Thomas Long, "U.S. Officials Have Information on Jesuit Case, Court Believes," *The Miami Herald*, July 2, 1991.

Justice Department also engaged in a blatant conflict of interest, simultaneously acting as the agent of the Salvadoran government in the letters rogatory process and as counsel for those being deposed, again potentially blocking the emergence of useful information.

As 1991 drew to a close, U.S. Undersecretary of State Lawrence Eagleburger promised Congress that the United States would continue to "press vigorously on the issue of human rights in general, and prosecutions in the Jesuit case in particular."⁷³ One sure indication of U.S. seriousness would be to release documents on the Jesuit case currently withheld on grounds of national security — documents which would show how much the U.S. Embassy, State Department and intelligence agencies knew about the murders before and after they occurred. At a minimum, the Bush Administration should add its voice to the dozens of members of Congress who have opposed amnesty for those convicted of the Jesuit murders.

The ability to monitor human rights in El Salvador was also compromised by renewed verbal attacks by the U.S. government on the Archdiocesan human rights office, Tutela Legal. Long-standing U.S. hostility toward the office exploded over remarks attributed to its director, María Julia Hernández, regarding the case of the two U.S. servicemen executed by the FMLN.⁷⁴ Public criticism by the State Department was widely reported in El Salvador, prompting further verbal attacks on Tutela by the ruling ARENA party. When Hernández visited the United States several weeks later, she was detained by Customs agents for an hour and a half and her papers and personal belongings were

⁷³ Letter from Acting Secretary of State Lawrence Eagleburger to Representative David Obey, chair of the House Subcommittee on Foreign Operations, October 23, 1991.

⁷⁴ In early February, Hernández and another church representative visited the FMLN combatants who were detained for the murders. A transcript of her remarks to the press after the visit was ambiguous as to whether Hernández herself termed the murders a "mercy killing" or was simply repeating the justification given to her by the guerrillas. On February 7, without having even seen a transcript of Hernández's remarks, State Department spokeswoman Margaret Tutwiler lambasted Tutela Legal, saying that "we are appalled" that a human rights group "would accept without question the account of those implicated in the crime." Tutela Legal had already clearly denounced the murders as grave violations of international humanitarian law.

searched. Later, in another apparent act of intimidation, two FBI agents purporting to be seeking her testimony for a U.S. grand jury showed up unannounced at the door of her hotel room rather than making a prior appointment or even calling her from the lobby phone. The denunciations and harassment of Hernández were truly shameful, continuing the Reagan Administration's sad tradition of hostility toward El Salvador's principal human rights organization.

The Work of Americas Watch

Americas Watch continued to devote considerable resources to El Salvador in 1991, providing current information through its office in San Salvador (in place since 1985) and its staff in Washington to hundreds of journalists, congressional aides, diplomats, attorneys, scholars and activists. Several publications throughout the year provided an in-depth look at various aspects of the human rights situation. In March, Americas Watch published *El Salvador and Human Rights: The Challenge of Reform*, reviewing the previous year of human rights abuses leading up to the 1991 municipal and legislative elections. In August, Americas Watch published a study, "El Salvador: Extradition Sought for Alleged Death Squad Participant." The newsletter focused on the effort to extradite from the United States to El Salvador alleged death squad participant César Vielman Joya Martínez, who had provided extensive testimony on the Salvadoran military's death squad activities. The newsletter opposed extradition because he would not receive a fair trial in El Salvador and was likely to face severe threats to his safety. In November, Human Rights Watch along with Yale University Press published *Human Rights since the Assassination of Archbishop Romero*, a comprehensive review of the past decade of human rights violations and U.S. policy in that regard. In December, Americas Watch published an analysis of the trial in the Jesuit case.

Americas Watch publications and staff were regularly quoted in major newspapers and radio broadcasts in the United States, as well as in the local press in El Salvador. Articles by Americas Watch staff also appeared in major U.S. publications, including *The New York Times* and *The Washington Post*. A representative of Americas Watch testified before two House subcommittees in February and April on human rights conditions in El Salvador. In addition, Americas Watch had frequent exchanges with the U.S. and Salvadoran governments and the FMLN

regarding particular human rights cases and overall human rights practices.

Americas Watch focused considerable attention on several prominent cases in 1991. Americas Watch maintained extensive contact with the FMLN regarding the case of two murdered U.S. servicemen described above, requesting to observe any trial of their combatants and urging a swift investigation and prosecution of the accused. Americas Watch submitted an affidavit on behalf César Vielman Joya Martínez calling on U.S. judicial authorities to deny his extradition to El Salvador. Americas Watch continued to monitor the Jesuit case, sending an observer to the trial in September and filing Freedom of Information Act appeals for relevant documents that are being withheld by several U.S. agencies.

Americas Watch continued its involvement in a class action lawsuit brought by the American Baptist Churches and other religious institutions on behalf of Salvadoran and Guatemalan applicants for political asylum in the United States. An out-of-court settlement of the case required Immigration and Naturalization Service asylum adjudicators and judges to obtain independent information on conditions in El Salvador and Guatemala. A representative of Americas Watch briefed U.S. immigration judges in May and the State Department's Human Rights Bureau in July. Americas Watch also submitted written comments challenging the State Department Human Rights Bureau's characterization of conditions in El Salvador.

GUATEMALA

Human Rights Developments

The human rights situation worsened in many respects in Guatemala in 1991, despite some encouraging developments in the prosecution of crimes in which the military or its agents are implicated and the replacement of some abusive military personnel. Although a new civilian president, Jorge Serrano Elías, came to office in January promising to respect human rights and end impunity for violators, the army, police, civil patrols and death squads continued to get away with political killings, torture and disappearances. The army and civil patrol leaders continued

to compel participation in the supposedly voluntary civil patrols, especially in the highlands, and to exact reprisals against those who refused. A massive campaign of death threats against leaders of human rights organizations, unions, church groups, popular organizations, and the press added to the terror. On August 19, a powerful bomb was deactivated in a building that houses several news agencies.

The gravity of the threats was underscored by several high-profile political assassinations, such as the April 29 shooting death of Dinora Pérez Valdez, a social democratic candidate in the November 1990 elections for the national legislature; the stabbing death of Marist Brother Moisés Cisneros that same day; the slaying on July 15 of Julio Quevedo, the director of social action for the bishop of Quiché; the August 5 murder of José Miguel Mérida Escobar, the chief of the Homicide Division of the National Police, who developed evidence implicating military intelligence in the September 1990 murder of anthropologist Myrna Mack; as well as dozens more slayings of lesser known individuals. Two massacres were committed in August and another in October, at least one of them allegedly carried out by the army.

Entrenched repression in Guatemala has long prevented domestic groups from conducting on-site investigations into human rights abuses, which has made it difficult to measure accurately the level of violations throughout the country. Although some groups are beginning to conduct field research, their efforts are not systematic and are fraught with risk for investigator and witness alike. Various groups now produce statistics about human rights violations, but for the most part they are based on press reports and cases in which individuals come to the group's offices to provide testimony. The most conservative statistics are those published by the congressionally elected human rights ombudsman. In the first six months of 1991, the ombudsman documented 116 extrajudicial executions; another 172 cases are listed by the office as under investigation.⁷⁵ The ombudsman also documented twenty-seven forced disappearances during the same period, with an additional thirty-four

⁷⁵ The ombudsman's figures include an undetermined number of slayings by the guerrillas, as well as those attributed to government forces and death squads. The percentage of extrajudicial executions by the guerrillas is believed to be relatively small.

cases still under investigation.⁷⁶ These figures undoubtedly understate the true number of violations, because fear prevents many victims and witnesses from reporting abuses. The tempo of killings appeared to rise in August and September, leading many observers, including Archbishop Próspero Penados del Barrio, to recall the carnage of the late 1970s and early 1980s.⁷⁷

Torture remains a permanent aspect of Guatemala's human rights situation. Although most victims tortured by the security forces in Guatemala do not live to testify about their experience, evidence that the practice is common can be deduced from the condition in which bodies are found. In 1991 a handful of individuals tortured by the police or army survived and were able to provide detailed testimony about their ill-treatment.

- o On August 25, detectives from the National Police Department of Criminal Investigations tortured three men arrested in connection with a wave of assassinations. The incident prompted the human rights ombudsman to issue an unprecedented call for the resignation of the National Police director in late October. The victims had signs of first and second degree burns as well as severe bruising, according

⁷⁶ A rough comparison can be made between the figures compiled by the ombudsman in the first half of 1990 and those compiled during the same period in 1991, although the categories used by the office have become more refined in 1991. In 1990, the ombudsman simply reported the number of alleged violations *received* by his office, without indicating the number of complaints verified, under investigation, or dismissed. In the first six months of 1991, the ombudsman received a total of 321 complaints of extrajudicial executions and 80 of disappearances. During the first six months of 1990, the ombudsman received complaints of 204 alleged extrajudicial executions and 105 disappearances. Clearly the total number of *reported* extrajudicial executions and disappearances rose in the first six months of 1991, compared with the same period in 1990. Subsequent months in 1991, for which the ombudsman's figures are not yet available, are expected to show greater political violence still.

⁷⁷ See archbishop's message to President Serrano on the 170th anniversary of Guatemalan independence, September 15, 1991.

to the ombudsman.⁷⁸ The National Police director, Colonel Mario Paíz Bolaños, denied that police agents had tortured the victims, suggesting that their wounds were self-inflicted.⁷⁹ Nonetheless, Colonel Bolaños resigned on President Serrano's orders on October 30.⁸⁰

- o The December 1990 torture by the army of Julio Chalcu Ben came to light only in the middle of 1991, when the severely injured youth was discovered in a hospital in Escuintla. According to testimony taken by the Guatemalan human rights group CERJ (the Council of Ethnic Communities "We Are All Equal"), military commissioners (among them Chalcu's uncle) seized Chalcu in the hamlet of Peña Blanca, Sacsiguan, in the department of Sololá, on the evening of December 16, 1990. Chalcu was taken to the military base in Sololá, where he was held, bound hand and foot, for ten or eleven days, with no food and only urine to drink, and with frequent beatings. On December 26, soldiers stabbed him on the right arm, the abdomen and the throat. The next day, firemen found Chalcu lying by the side of the road just outside Escuintla, more than 130 kilometers from Sololá. He was hospitalized for nearly five months before he was able to write out his name and "Sololá," enabling his family to discover for the first time since his disappearance that he was still alive. Chalcu suffered severe and permanent injuries, including brain damage which left him partially paralyzed and unable to speak.
- o The torture by the National Police of former trade union leader Otto Iván Rodríguez, who was beaten and burned repeatedly with cigarettes in the police station in Chiquimula in April, was documented by the Archbishop's Human Rights Office.

⁷⁸ Procurador de los Derechos Humanos, Ref. Exp. Gua. 398-91/p, of.3ro, October 21, 1991.

⁷⁹ "Paíz: La Procuraduría viola la Constitución," *Siglo Veintiuno*, October 26, 1991.

⁸⁰ *Miami Herald*, October 31, 1991.

Street children and their advocates continued to be singled out for abuse, by the National Police, private security guards licensed by the government, and unidentified men. For example, on August 1, two National Police agents helped a plainclothesman capture fifteen-year-old Edwin Esteban Rodríguez García, a street child, after he stole a pair of sunglasses in Guatemala City's Zone 1. The policemen rode in the third man's vehicle, only to get out later. Two other plainclothesmen then entered the vehicle. The men drove Rodríguez García to a secret location in Mixco, just outside of the capital, where they beat him severely and burned his chest, back and testicles with lit cigarettes. Later they threw him in a gulley.

Casa Alianza, the Guatemalan branch of the New York-based Covenant House which operates shelters for street children as well as a new legal aid office, came under heavy pressure as a result of its work in 1991. Two Casa Alianza "street educators" were captured at gunpoint in Guatemala City by plainclothes policemen on January 25. Although witnesses saw the agents take the two into the National Police headquarters, the police denied having detained them until U.S. Ambassador Thomas Stroock intervened and secured their release. Another Casa Alianza street educator in Guatemala City received telephoned death threats in April. On July 18, four armed men in a blue BMW with smoked glass windows shouted death threats and fired on the Casa Alianza shelter in Zone 1 of Guatemala City.

Leftist insurgents were apparently responsible for several political assassinations, particularly in the northeastern department of Petén. Most of these killings violate common Article 3 of the Geneva Conventions of 1949, which prohibits attacks against persons taking no active part in hostilities.

In addition, on February 16, a guerrilla unit ambushed a group of armed civil patrollers who were attempting to take down banners that guerrillas had placed on the Xalbal bridge in the village of Santo Tomás Playa Grande, in the department of El Quiché. Ten patrollers died in the ambush and three were wounded. According to testimony taken by the human rights ombudsman from patrollers who survived, some of the guerrillas emerged from their hiding place after the initial attack to

"finish off" (*rematar*) the patrollers who lay wounded on the ground.⁸¹ While an ambush of armed civil patrollers is legitimate under the laws of war, the execution of those placed *hors de combat* by their wounds is absolutely prohibited by common Article 3 of the Geneva Conventions.

The courts made some progress in pursuing cases in which the security forces or civil patrollers are implicated, including an unprecedented conviction of military personnel in connection with the December 1990 massacre at Santiago Atitlán. Yet in many cases, efforts to obstruct justice overshadowed all other developments, and even the conviction for the massacre was a parody of justice.

- o At about 1:00 A.M. on December 2, 1990, soldiers fired on a crowd of peaceful indigenous protesters near the town of Santiago Atitlán, killing thirteen and wounding twenty-one. Although there were thousands of witnesses, including the outgoing mayor and the mayor-elect who led the demonstrators, the military judge in charge of the inquest never interviewed any of them, nor did she collect physical evidence at the site of the massacre. The bodies were buried without autopsies. Testimony gathered by Americas Watch and Physicians for Human Rights from demonstrators who were at the front of the crowd suggest that up to fifteen soldiers were shooting.⁸² Nonetheless, the army from the outset insisted that only two soldiers were responsible for the incident. Consistent with the army's version of events, on October 19, the military court convicted Sergeant Major Efraín García González for murder, and Lieutenant José Antonio Ortiz Rodríguez, the garrison commander whose violent carousing in town the night before had precipitated the residents' protest, of public intimidation and unauthorized use of a firearm. García González was sentenced to sixteen years in prison and Ortiz Rodríguez to four. The attorney general has appealed García González's sentence as too lenient.

⁸¹ Procurador de los Derechos Humanos, Ref. Exp. Qui. Eio.025-91/p, printed in *Resoluciones del Procurador de los Derechos Humanos 5-91*, Colección: Cuadernos de Derechos Humanos, p. 12.

⁸² Americas Watch and Physicians for Human Rights, *Getting Away With Murder*, pp. 53-61.

- o On October 6, 1990, Chunimá's most outspoken human rights activist, Sebastián Velásquez Mejía, was kidnapped from a bus stop in front of dozens of witnesses. Three local men later testified that the captors seized Velásquez minutes after conferring with the local chief of the military-organized civil patrol, Manuel Perebal Ajtzalam III, a man who had threatened Velásquez and other rights activists repeatedly in the past. Velásquez was found dead in Guatemala City two days later.

On February 17, 1991, two of the witnesses — Manuel Perebal Morales and Diego Perebal León — along with their father, Juan Perebal Xirúm, were shot near their village by civil patrol leaders Perebal Ajtzalam and Manuel León Lares, along with four other unidentified men. Only Diego Perebal León survived the shooting; he remains confined to a wheelchair.

The February 17 shootings could easily have been avoided because, at the time, the police had ignored for nearly a month an order issued by a district court judge to arrest patrol leader Perebal Ajtzalam for the kidnapping and murder of Velásquez Mejía. Also ignored by the police was a 1990 warrant for the arrest of León Lares in connection with an attack by patrollers on a peaceful human rights demonstration.

On February 18, arrest warrants were again issued for patrol leaders Perebal Ajtzalam and León Lares. In mid-April, fifteen members of the U.S. Congress wrote to President Serrano about the case, urging him to have the suspects arrested and to protect the lives of surviving human rights activists in Chunimá. Apparently as a result of this pressure, the police on April 26 made their first attempt to arrest the patrollers but, faced with armed resistance from the patrollers, fled the village without detaining anyone. Nonetheless, on May 3, President Serrano wrote to U.S. Senator Alan Cranston and falsely stated, in reference to the case, "today I can report that all suspects are in Police custody."

On June 13, the police again entered Chunimá and again were repelled without arresting anyone. Immediately after the police fled, patrollers beat and threatened an elderly member of the human rights group GAM (the Mutual Support Group) who had helped show

the police the suspects' homes. They also briefly detained and threatened a CERJ member who had accompanied the police as a guide.⁸³

It was only on the morning of July 30, when Guatemala was obliged to appear before the Organization of American States (OAS) Inter-American Court of Human Rights to answer a complaint filed by Americas Watch and the Center for Justice and International Law concerning the Chunimá case, that the patrollers were finally arrested. They remain in pretrial detention in Santa Cruz del Quiché.

- o On September 11, 1990, Guatemalan anthropologist Myrna Mack was stabbed to death as she left her office in Guatemala City. On August 5, 1991, José Miguel Mérida Escobar, the chief of the Homicide Division of the National Police and one of two police investigators working on the Mack murder case, was shot dead outside the National Police headquarters. He had developed evidence implicating military intelligence in the murder of Mack — a murder carried out, according to a September 29, 1990 police report written by Mérida and another investigator, for political motives. The September report was apparently censored by Mérida's superiors, who instead provided the judge with a report in which all references to the army and political motivation were omitted.

Nonetheless, a copy of the original report was leaked and presented to the judge by the attorney general's office. Shortly before his death, Mérida was summoned to the court to authenticate the report. According to the Archbishop's Human Rights Office, Mérida ratified all the sections of the more-than-sixty-page report in which his signature appeared. This enabled the judge to name a suspect from

⁸³ See Americas Watch, "Slaying of Rights Activists, Impunity Prevail Under New Government," April 14, 1991; and Americas Watch and Physicians for Human Rights, *Guatemala: Getting Away With Murder*, August 1991, pp. 32-36.

the army.⁸⁴

Mérida confided to a witness shortly after his court appearance that he had just "signed his death sentence." Nonetheless, Mérida offered to testify before the Inter-American Commission on Human Rights about high military involvement in the Mack murder and subsequent cover-up, if he and his family could be taken safely out of Guatemala. Arrangements for their safe passage were underway at the time of his murder.⁸⁵

Mérida had come under surveillance following his court appearance. He had met with Interior Minister Fernando Hurtado Prem, Attorney General Acisclo Valladares and Human Rights Ombudsman Ramiro de León Carpio to tell them that he feared for his life because of his role in the Mack case. The interior minister responded by suggesting that Mérida wear his gun even when off-duty.

Evidently to counter the strong circumstantial evidence that Mérida was killed for having exposed official involvement in the Mack murder, the government tried to shift the blame in a patently incredible fashion. In late August, the government produced a suspect who "confessed" to the police that he had killed Mérida because of a personal grudge. According to a videotape of the confession, Gonzalo Cifuentes Estrada was having his shoes shined on August 5 when by pure coincidence he saw Mérida leaving the National Police headquarters. Acting on a three-year-old grudge, he allegedly shot Mérida on the spot. According to a police report, Cifuentes, overcome with chagrin that state agents were being unfairly blamed for Mérida's killing, voluntarily confessed to the

⁸⁴ The suspect, Noel de Jesús Beteta Alvarez, worked until November 1990 in the security section of the president's military affairs department (*Estado Mayor Presidencial*), an elite military intelligence unit.

⁸⁵ Human Rights Office of the Archbishop of Guatemala, "Myrna Elizabeth Mack Chang (40), Guatemalan Anthropologist Murdered on September 11, 1990," October 1991, pp. 11-16.

crime when the police picked him up for an unrelated offense.⁸⁶

There is evidence that Cifuentes was not in Guatemala City at the time of the crime and that his videotaped confession was made under threat of death. Once he was allowed to see a judge, Cifuentes retracted his confession.⁸⁷ Moreover, in making a videotape of his confession and distributing it to at least one television station, the police violated a provision in Article 13 of the Constitution which states: "The police authorities cannot *ex officio* present before the news media any individual who has not previously been arraigned before the competent court." Having tried and failed to cover up official involvement in the Mack slaying, the authorities now find themselves involved in an ever more complicated web of violence and deceit.

Meanwhile, on December 3, police in Los Angeles, California detained Noel de Jesús Beteta Alvarez, the named suspect in the Mack murder. The police turned Beteta Alvarez over to the custody of the U.S. Immigration and Naturalization Service, for whom he signed a "voluntary departure agreement." He was flown to Guatemala the next day and detained at the airport.

- o On the morning of August 9, the bodies of ten men and one woman were found on the highway from Escuintla to Taxisco, shot in the head with their hands tied. Several of the victims were involved in truck transport of goods from Puerto Quetzal to the capital, and some were also customs workers.

On August 16, the army press office announced that seven military personnel had been detained in connection with the massacre, including the commander of the Pacific Naval Base, Captain Aníbal Rubén Girón Arriola. Also detained were another captain, two lieutenants and three soldiers. A judge has since ruled that Captain Girón — whose reputation for human rights abuses is said to be well

⁸⁶ *Ibid*, p. 28.

⁸⁷ *Ibid*, pp. 27-28.

established in the area — will not stand trial in the case.⁸⁸ Attorney General Valladares has appealed the judge's decision.

The motive for the massacre remains a source of speculation. A government official told Americas Watch that either the naval officers were dispensing summary justice against traders in some unspecified contraband, or the naval officers themselves were engaged in contraband and the victims were killed for having encroached on their turf.

- o The torpor with which the June 1990 murder of U.S. citizen Michael Devine has been investigated and prosecuted in Guatemala was a primary reason for the suspension of U.S. military aid and commercial arms sales to Guatemala in December 1990. Several soldiers were detained in 1991 in connection with the case, as was Captain Hugo Contreras Alvarez. Three colonels were questioned by a military court, but one was never detained and the other two were detained but then released for insufficient evidence of guilt. The military tribunal that released the officers also granted Captain Contreras provisional liberty on September 20. All of the officers have been returned to their posts.
- o A member of the Presidential High Command has been detained and charged with the July 1989 murder of José Rolando Pantaleón, a Coca Cola union activist and a member of the union's now-disbanded political theater group.⁸⁹

The lack of enthusiasm with which Guatemala's civilian leaders have viewed the notion of seeking redress for the horrendous human rights abuses committed during the decades of military rule was best expressed by Vinicio Cerezo Arévalo, the former president, who in 1985 said, "We are not going to be able to investigate the past. We would have to put the

⁸⁸ Doug Mine, Associated Press, August 19, 1991.

⁸⁹ See Americas Watch, *Messengers of Death: Human Rights in Guatemala November 1988 - February 1990*, pp. 20-23.

entire army in jail.⁹⁰ Nonetheless, grass roots pressure from relatives of the victims of thousands of disappearances produced some results in 1991.

- o In June 1991, the National Coordinating Body of Guatemalan Widows (CONAVIGUA) announced the discovery of a clandestine cemetery containing an estimated 110 bodies of peasants killed in 1981 and 1982. A court-ordered exhumation of the graves was carried out between July and October, with the assistance of Oklahoma forensic anthropologist Clyde Collins Snow and the Argentine Team of Forensic Anthropologists. Twenty-seven skeletons so far have been exhumed from the site, and fourteen of them positively identified. Laboratory analysis of the skeletons by Dr. Snow showed that thirteen of the victims died as a result of bullet wounds from ammunition commonly used by the army; those victims also showed signs of having been burned. These findings corroborate the testimony of relatives and witnesses who said the army had locked the victims inside the church, set them on fire, and then shot them. Another thirteen victims were found buried together, with their hands tied behind their back and a single wound from a .22 caliber rifle in their head. This evidence corroborated testimony of relatives and witnesses that the victims were executed by civil patrolmen, who are known to use .22 caliber rifles. There have been no arrests in the case.
- o The exhumation in 1989 of eight clandestine graves in the village of Tunajá, in the department of El Quiché, eventually led to the arrest of the former patrol chief from that village, Santos Coj Rodríguez. However, in early October 1991, shortly before Coj Rodríguez was expected to be tried for the eight murders and illegal burials, he "escaped" from prison in Santa Cruz del Quiché, apparently with the assistance of two National Police officers. Attorney General Valladares has reportedly initiated criminal proceedings against the

⁹⁰ Jean-Marie Simon, *Guatemala: Eternal Spring, Eternal Tyranny* (New York: W.W. Norton & Co., 1987), p. 227.

police agents responsible.⁹¹

- o The police have also failed to arrest the former civil patrol leader of San Antonio Sinaché, in the department of El Quiché, whose arrest was ordered for a string of murders in 1984 after exhumations assisted by Dr. Snow were carried out in December 1990 and January 1991.⁹²

The Right to Monitor

The violent persecution of human rights monitors continued in 1991. Between February and June, four human rights activists were murdered and a fifth disappeared; three sons of rights activists were also murdered. In each case, circumstances suggest involvement of the security forces or their agents.⁹³ Amílcar Méndez Urizar, the leader of CERJ, was obliged by surveillance, threats and harassment to spend a portion of the year in hiding, and eventually to leave the country for several months.

In addition, in trying to discredit its critics in the human rights movement, the Serrano government has recklessly exposed them to the risk of further violent attacks. For example, during a visit to Washington in late September and early October, President Serrano publicly proclaimed, "We have documented all the relations of [CERJ President] Amílcar Méndez with the insurgency." He insisted flatly that Méndez "is working with the insurrection" and that CERJ is a "parallel organization" to the guerrilla movement. These statements, without foundation to the

⁹¹ "Escapa un ex patrullero civil sindicado de varios crímenes," *Siglo Veintiuno*, October 12, 1991; and "GAM teme venganza por la fuga de ex patrullero," *Siglo Veintiuno*, October 13, 1991.

⁹² Americas Watch and Physicians for Human Rights, *Getting Away With Murder*, pp. 71-76.

⁹³ Those killed were CERJ members Manuel Perebal Morales, Juan Perebal Xirúm, Camilo Ajqui Jimón and Celestino Julaj Vicente. CERJ member Santos Toj Reynoso has disappeared. The murdered sons of a CERJ member are Manuel Ajataz Chivalán, Pablo Ajataz Chivalán and Miguel Calel. See Americas Watch and Physicians for Human Rights, *Getting Away With Murder*, Appendix E.

best of our knowledge, are tantamount to a death sentence for CERJ activists, who have suffered unrelenting persecution since the army launched a propaganda campaign in 1989 to equate CERJ with the insurrection. Serrano told representatives of U.S. human rights groups that he based his accusations on the similarity of the slogans used by CERJ and the guerrillas, as if the guerrillas' echoing of CERJ demands for respect for human rights and the Guatemalan Constitution makes CERJ party to an armed rebellion.

On October 17, Méndez appeared in Washington, D.C. at a lunch meeting sponsored by the Washington Office on Latin America. When Méndez and his hosts arrived at the meeting room, they discovered a table covered with dozens of copies of an anonymous flyer attacking Méndez and his wife. The flyer, which included a picture of Méndez meeting with President Serrano in June, accused Méndez and his wife of involvement with the guerrillas — an accusation which Méndez emphatically denies. The picture, which has not appeared in the press, appeared to be the same one that President Serrano had displayed to human rights groups during his visit to Washington a few weeks before. Both the inclusion of the photograph and the style of the flyers bore the hallmarks of a military job. Civilian officials of the Guatemalan Embassy have denied any knowledge of the origin of the flyers, but there is evidence to suggest that the military attaché was responsible.

The Serrano government also hampered the work of the OAS Inter-American Commission on Human Rights by pressing for the removal of its staff attorney working on Guatemala. Shortly after the hearing on the Chunimá case before the Inter-American Court of Human Rights which the Commission had requested, Guatemala's ambassador to Washington twice wrote to the OAS secretary general demanding the removal of staff attorney Cristina Cerna. The Commission complied and removed Cerna from all of its work on Guatemala, despite the protest of human rights groups in Washington. Yet, in a September 30 meeting with human rights groups, President Serrano emphatically and angrily denied that his government had pressured the Commission to remove Cerna.

An incident in October involving the United Nations special representative to Guatemala brought a commendable response from President Serrano. The representative, Christian Tomuschat, was visiting an isolated community of displaced persons in a conflictive area of northern Quiché province, following a cease-fire arranged between the government and the guerrillas. Despite the negotiated cease-fire, Tomuschat learned upon arriving that the air force had strafed the area

only moments before. Serrano moved quickly to fire the air force chief.

Although the International Committee of the Red Cross (ICRC) has had an office in Guatemala City since 1988, the government has not allowed it to expand its work beyond disseminating information to the army and visiting prisons. Prison visits are of little use to the ICRC in Guatemala, because those captured by the security forces who are suspected of ties to the guerrillas are generally held in clandestine detention and killed, rather than being turned over to the courts and the prison system.

U.S. Policy

U.S. policy toward Guatemala continued more or less on the course set on December 21, 1990, when the Bush Administration suspended military aid and commercial arms sales to Guatemala on human rights grounds. Overall, the Bush Administration's policy toward Guatemala — especially in the last two years — has been far more attentive to human rights concerns than that of its predecessor.

The Administration made efforts to improve relations with the new Serrano government during its first months in office. Ambassador Stroock, in a meeting with President Serrano in February, offered to deliver military "flight safety equipment" worth approximately \$1.2 million, while reportedly insisting that further assistance would only follow measurable human rights improvements. Serrano, who is fond of defending what he calls Guatemala's national dignity, told the press that he had refused Stroock's offer. "I'm not going to accept their orders," he said, referring to human rights conditions. "Our dignity must be respected. My government has decided not to accept the military aid."⁹⁴ Nevertheless, the flight safety equipment was delivered and accepted, according to the State Department.

Because of the aid suspension in December 1990, most of the military aid that would have gone to Guatemala in fiscal year 1991 was "reprogrammed" to other countries. However, military training was not affected by the suspension, and continued at a rate of \$414,000 in the 1991 fiscal year. The Bush Administration has made no explicit statement about the future disposition of approximately \$10.8 million worth of

⁹⁴ "Guatemala Rejects U.S. Aid, *The Washington Post*, February 9, 1991.

military aid which had been obligated for Guatemala in prior years but not delivered before the aid suspension.

The Foreign Aid Authorization Bill passed by the U.S. House and Senate for fiscal years 1992 and 1993 would have barred military aid and commercial arms sales and restricted economic support funds (balance of payments relief) pending human rights improvements. However, the House refused to vote for the final version of the authorization, which incorporated versions already passed by the House and the Senate, thereby postponing decisions on foreign aid until an appropriations bill can be passed. We expect that the language restricting aid to Guatemala which was included in the now-defunct authorization bill will be retained in the appropriations bill.

Despite having suspended military aid on its own initiative, the Bush Administration initially fought congressional attempts to impose restrictions through legislation. Administration spokesmen argued that the Serrano government had broken with the past.⁹⁵

During a March 5 hearing before the House Subcommittee on Western Hemisphere Affairs, Assistant Secretary of State for Inter-American Affairs Bernard Aronson hailed President Serrano for having made human rights promises during his inauguration speech and for having chosen his own defense minister and chief of staff of the armed forces, rather than accepting those who would have held the job automatically. Secretary Aronson also praised President Serrano for visiting the office of the human rights ombudsman, committing himself to reform of the penal code, and making unspecified "changes" in the investigation into the 1990 slaying of Michael Devine.

It was inappropriate for the Administration to praise these largely symbolic steps without at the same time decrying the lack of any improvement in the actual behavior of the army and police. Between the time that President Serrano took office and Secretary Aronson presented his testimony, three human rights activists had been shot, two of them fatally, by military-organized civil patrols in Chunimá. As noted above,

⁹⁵ The Guatemala chapter of the State Department's annual *Country Reports on Human Rights Practices for 1990*, published in February 1991, was the strongest and most accurate to date, a major improvement over past years. Yet because it covered the final year of the outgoing government of Vinicio Cerezo Arévalo, the Bush Administration treated it as irrelevant to its appraisal of the new Serrano government.

those killings were wholly preventable, given the existence of outstanding arrest warrants against the two identified assailants. On several occasions, President Serrano was made aware of the police's failure to arrest the suspects, who continued to live freely in their communities and to terrorize local rights activists, yet neither he nor his interior minister, who is nominally in charge of the police, had taken any action. Indeed, the judge in the case described to Americas Watch his futile efforts to get the interior minister on the telephone to ask him to press the police to make the arrests.

Nonetheless, as political killings mounted in the subsequent months, the Bush Administration agreed not to oppose the legislation emerging from the House Foreign Affairs Committee. However, on September 27, the Administration moved to make available to the Serrano government \$50 million in economic support funds obligated in fiscal years 1990 and 1991 but suspended because of disagreements over fiscal policy. The funds will be disbursed once Guatemala meets certain economic criteria wholly unrelated to human rights. In our view, this payment violates Section 502B of the Foreign Assistance Act of 1961 (as amended), which prohibits the provision of security assistance — defined to include economic support funds — to governments engaged in a consistent pattern of gross violations of human rights.

This large package of cash assistance is far more significant to the Serrano government than the symbolic amount of military aid now suspended because of human rights violations. Providing these funds under the current circumstances undercuts the message that the Bush Administration sent by suspending military aid. To send an unmistakable signal on human rights, the Bush Administration ought to withhold Economic Supports Funds until the Guatemalan security forces cease political killings, torture, and disappearances and begin to prosecute those responsible.

At the same time, the Bush Administration continues to support the Guatemalan police by providing equipment and training through a variety of special programs such as the Justice Department's International Criminal Investigations Training and Assistance Program, aid to the Treasury Police for drug eradication and interdiction, and police training under the State Department's Anti-Terrorism Assistance program. Americas Watch opposes such aid while the police continue to carry out torture and murder with impunity. Revelations about the police's role in covering up the murder of Myrna Mack make a mockery of U.S. efforts to reform the police.

On the positive side have been several significant Administration interventions and gestures on human rights. In a meeting with President Serrano at the White House on October 2, President Bush highlighted U.S. concern about continued human rights violations as well as the failure to prosecute those responsible for the murder of Michael Devine, according to the State Department. And, as noted above, Ambassador Stroock's intervention in what appeared to be an attempt by police plainclothesmen to disappear two Casa Alianza street educators in January may have saved their lives. Ambassador Stroock's presence at a memorial mass on the first anniversary of the assassination of Myrna Mack was also an important symbolic gesture.

In November, the Guatemalan attorney general issued a formal complaint before a judge on charges that two agents of the U.S. Drug Enforcement Agency (DEA) had kidnapped and tortured an alleged drug trafficker in Guatemala before flying him to the United States. The victim, Nicaraguan citizen Carlos Gadea Morales, has alleged that the DEA agents, along with agents of Guatemala's military intelligence bureau, seized him on September 22 at Guatemala's La Aurora airport and tortured him in a back room at the terminal. The next day, Gadea stated, the agents took him to a farm in the eastern department of Izabal, from which he was flown by U.S. Coast Guard jet to Miami. The State Department has offered a rather improbable account in denying that Gadea was kidnapped. John Arndt, State Department desk officer for Guatemala, told Americas Watch that Guatemalan officials approached Gadea at the airport and asked him to cooperate in an investigation of drug trafficking in Guatemala. The Guatemalan officers invited the DEA agents to join them in a trip to some properties in Izabal. Given the choice between being forcibly expelled from Guatemala and voluntarily flying to Miami to face drug-trafficking charges, Gadea chose to fly to Miami, Arndt said, adding that upon arriving in Miami Gadea was examined by a physician who found no signs of torture.

The Work of Americas Watch

To a large extent the objectives that Americas Watch set out for U.S. policy toward Guatemala were met in 1991, as U.S. military aid remained suspended, and Congress moved toward legislation that would restrict economic support funds and prohibit all military aid and arms sales. If enacted next year as expected, the restrictions will send a strong message

to the Guatemalan government and military that human rights must be respected if normal relations with the United States are to be maintained. It is hoped that a firm U.S. stance on human rights will lead to concrete improvements in Guatemala.

Our collaboration with Physicians for Human Rights, which began with a mission to Guatemala in December 1990, continued in January 1991 with a mission that included exhumations in San Antonio Sinaché and a fact-finding trip to Santiago Atitlán. In early September, the two organizations jointly published a report on impunity and the medico-legal system entitled *Guatemala: Getting Away With Murder*. The report received considerable attention in the U.S. and Guatemalan press and generated pressure on President Serrano to address human rights abuses during his September-October visit to the United States.

The interest elicited by the exhumations of victims, conducted with the help of expert members of our delegation that visited Guatemala in December 1990 and January 1991, brought about a request for similar assistance when a large clandestine cemetery was discovered in June, as described above. Americas Watch and Physicians for Human Rights helped arrange for experienced forensic authorities to spend an extended period in Guatemala assisting with the exhumations and helping to identify and determine the cause of death of the victims.

Perhaps our most pressing concern in Guatemala over the past four years has been the violent persecution of human rights activists. The tragic story of Chunimá, described above, has been a vehicle for pressing these concerns in 1991. During our December 1990 mission, we assisted in the exhumation of the first victim from Chunimá, human rights activist Sebastián Velásquez Mejía. A few days after two of the witnesses to Velásquez's kidnapping were shot together with their father on February 17, 1991, an Americas Watch representative interviewed the badly wounded survivor in the hospital in Sololá. On April 14, we issued a newsletter on the case, which helped draw congressional attention to the issue. The congressional letters which were subsequently sent to President Serrano prompted him for the first time to direct the police to arrest the suspected killers, although they did not succeed in carrying out their mission.

Also in April, Americas Watch and the Center for Justice & International Law (CEJIL) filed a petition with the Inter-American Commission for Human Rights asking it to investigate and seek redress from the Guatemalan government for the slaying of four Chunimá human rights activists and the wounding of a fifth, as described above.

The petition also called on the commission to seek an injunction from the Inter-American Court of Human Rights demanding that the Guatemalan government protect the lives of twelve human rights activists and two judges connected with the case who faced imminent risk of persecution from the Chunimá civil patrols. As one of several measures of protection, the petition asked that the outstanding arrest warrants against the patrollers be executed.

On June 28, acting on this request, the commission sought an injunction from the court, and on July 15, the court's president, Héctor Fix-Samudio of Mexico, issued a preliminary injunction requiring the Guatemalan government to "adopt without delay whatever measures are necessary to protect the life and physical integrity" of the fourteen named individuals. He also required the Guatemalan government and the commission to attend a July 29 hearing of the court on the request for an injunction. An Americas Watch representative attended the hearing, in San José, Costa Rica, as an advisor to the commission. On the morning of the hearing, which was postponed until July 30 at the government's request, the government sent soldiers to Chunimá in helicopters to arrest the patrollers.

On August 1, the full court affirmed the preliminary injunction issued by its president and extended it until December 3. The court also ordered the government promptly to report the specific measures of protection it had taken with regard to each of the individuals specified. It further required the commission and the government to keep the court informed of compliance with the resolution.

The court's action marked the first time in its history that it has held a public hearing on human rights in Guatemala, an event which received considerable publicity in Guatemala. It was also the first time that the court has issued an injunction to protect human rights monitors.⁹⁶ It is fitting that this unprecedented step be taken in Guatemala, where so many monitors have died at the hands of government forces or their agents.

Americas Watch representatives undertook several fact-finding missions to Guatemala in the second half of the year. In August and November, a staff member traveled with a delegation of church, human rights and other nongovernmental organizations to visit isolated

⁹⁶ The court has used its injunctive power on one other occasion, to order protection for witnesses to the murder of journalist Hugo Bustíos in Feru.

communities of peasants in northern areas of the Quiché department. The peasants, organized into so-called Communities of Population in Resistance, are among thousands of displaced villagers who have been hiding from the army for as long as ten years. Americas Watch plans to conduct further research into this subject for a possible publication in early 1992.

HAITI

Human Rights Developments

The year 1991 marked the first time in Haiti's history that its citizens, however briefly, lived under a freely elected government. But the rule of President Jean-Bertrand Aristide was violently suspended in September with the re-emergence of brutal military rule after the latest in a series of bloody coups d'état.

President Aristide's human rights record, though flawed, was distinguished by his efforts to extend civilian control over the army — the chief perpetrator of human rights violations and the main obstacle to democracy in Haiti since the fall of the Duvalier dictatorship in 1986. President Aristide pressured generals who had controlled the army under previous abusive military regimes to retire; promoted officers believed to be committed to democracy; and dismissed or transferred to obscure posts others known for human rights violations.

President Aristide also abolished the corrupt and abusive system of rural section chiefs. He admitted reform-minded officers into the police force, which in turn began to curb "insecurity," the rampant and often politically motivated violence that has periodically gripped Haiti's cities since 1986. The seven months of the Aristide government also saw a notable decrease in the loss of lives in rural land conflicts, which in the past had been a source of some of the worst massacres, often at the hands of corrupt soldiers in league with large landowners.

Nevertheless, President Aristide's human rights record was marred by sporadic military killings of civilians and Aristide supporters in the countryside. In addition, five youths were killed by officers friendly to the Aristide administration and the murders were never adequately investigated. Further, there was an apparent tolerance by the Aristide government of the lynching and intimidation of suspected criminals and at times political opponents by mobs of civilians. The popular killings are, in significant part, a symptom of frustration with the dysfunctional criminal-justice system inherited from President Aristide's predecessors. With justifiably little confidence that criminals, regardless of motivation, will be tried, convicted and punished, some Haitians have simply taken the law into their own hands. These underlying weaknesses in the judicial

system persisted under the Aristide government despite its efforts to remove corrupt judges and train new ones. Hundreds of detainees — including those alleged to have plotted against the civilian government in an earlier coup attempt on January 7 — were permitted to languish for months in prison, under deplorable conditions, before even being formally charged, let alone brought to trial.

In part, however, popular violence contributed to the weakness of the judicial system. Threats of lynchings were used by Aristide supporters to intimidate lawyers who attempted to defend the January 7 coup-plotters and the court that sought to try them, as well as members of Parliament who opposed the president's policies. President Aristide failed to use his tremendous moral influence to call for an end to these acts of intimidation, and in two speeches, in August and September, publicly seemed to endorse such threats of violence. The president's own publicly ambivalent attitude toward popular violence was later cited by the Haitian army as an excuse to commit yet another serious human rights violation by depriving the Haitian people of their elected government.

In the three months since the September 30 coup, the military government has accumulated a disastrous record on human rights. The regime is headed by Jean-Jacques Honorat, once a leading human rights advocate, who was installed as prime minister in a cynical attempt by the army to put the best face on an outlaw government.

In the immediate aftermath of the coup, Haitian troops killed at least three hundred civilians and wounded thousands more, in random shootings and targeted massacres of residents in impoverished neighborhoods who were suspected of being supporters of President Aristide. As many as one thousand may have been killed, according to the Platform of Haitian Organizations for the Defense of Human Rights, a coalition of nine human rights groups monitoring abuses in post-coup Haiti. In one massacre in the days following the coup in Lamentin, just outside Port-au-Prince, soldiers sought to avenge the murder of one or two troops by mowing down pedestrians and shooting into homes, killing some thirty to forty people. On October 2, soldiers killed some thirty civilians in Cité Soleil, an impoverished section of Port-au-Prince with strong pro-Aristide leanings, after a crowd reportedly attacked a police station in the neighborhood. Indiscriminate shooting, heavy automatic-weapons fire, the lobbing of grenades, and mass arrests by soldiers were reported in the early days of the coup in the Carrefours, Carrefours-Feuilles and Martissant sections of Port-au-Prince. Thousands of residents from these neighborhoods, which again generally backed Aristide, have

been forced to flee to the countryside.

On October 7, heavily armed troops surrounded the Legislative Palace, shooting automatic gunfire into the air, and stormed the building. The soldiers forced legislators at gunpoint — and by threatening to use hand grenades — to name Supreme Court Justice Joseph Nerette, an elderly jurist, to replace President Aristide. That day scores of armed soldiers badly beat Mayor of Port-au-Prince Evans Paul, a close associate of President Aristide, when they arrested him at the Port-au-Prince airport as he attempted to travel to Venezuela to meet with the exiled president. After hours of beatings and vows by soldiers to kill him, Paul was released the next day and went into hiding. At the same time, in an adjacent room at the airport, another group of soldiers broke up a meeting between a delegation of the Organization of American States (OAS) and the military junta.

In December, the military authorities stepped up their attacks on the Haitian legislature. On December 15, a rural section chief — under army authority — shot and killed Astrel Charles, a member of Parliament, in his home in the northern town of Pignon. Charles, a member of the socialist bloc of the Chamber of Deputies which supports President Aristide, reportedly was killed because he was planning to hold a political meeting. In the preceding three days, soldiers had set fire to some fifty houses in the northern town of Plaisance, including the home of the town's legislator, Deputy Jean Mandenave, and slaughtered livestock; and had reportedly shot and killed two Aristide supporters and burned down some thirty houses in a town near Desdunes in the Artibonite Valley.⁹⁷ The alleged killer of Deputy Charles, section chief Pierre Elum, reportedly turned himself in to the authorities on December 17, and confessed to the killing.

Other leading Aristide supporters have been arbitrarily arrested and sometimes savagely beaten by soldiers. They include popular musician Manno Charlemagne and prominent businessman Antoine Izmary. Since their release, they have been forced into hiding. The army also has been responsible for countless raids on homes and offices of those deemed to be opponents of the military regime, including members of President Aristide's cabinet. The homes or offices of Minister of Information Marie Laurence Lassègue, Minister of Finance Marie-Michèle Rey, and Minister

⁹⁷ "Army Promises Inquiry into Slaying of Pro-Aristide Legislator," Associated Press, December 16, 1991.

of Planning Renaud Bernadin, among many others, have been attacked, forcing these individuals, too, into hiding.

The army has targeted popular organizations throughout the country such as the Papaye Peasant Movement (MPP), the Kombit Komilfo, the Labadie Youth Movement, the Planters' Defense Group of the Artibonite, the Autonomous Confederation of Haitian Workers (CATH), the literacy project ALPHA, the Movement of Young Peasants of Lascahobas, the September 17 Popular Organization, KONAKOM and CARITAS, as well as organizations closely identified with President Aristide, such as the National Front for Change and Democracy, the popular *ti legliz* Catholic church movement, and the boys' shelter Lafanmi Selavi. Members of these organizations have been threatened, arrested or forced into hiding after their offices were raided and destroyed by soldiers.

Most recently, three union activists and a peasant leader were arrested by the police on December 17. Duckens Rafael, general secretary of the state electric company's union, along with fellow union officials Abel Point Dujour and Evans Fortune, reportedly were arrested while attempting to collect paychecks for workers fired since the coup. The police also arrested Dieudonné Jean-Baptiste, an MPP supporter and brother of one of Haiti's leading peasant activists, Chavannes Jean-Baptiste, the head of MPP. He is reportedly being held in police headquarters in Port-au-Prince.

In the southeastern city of Jérémie in October and in the northeastern city of Gonaïves in November, soldiers disrupted demonstrations by Aristide supporters, shooting into crowds or into the air on several occasions. Demonstrations against the military regime have been officially prohibited.

The press has been systematically silenced. The army quickly took aim at Haiti's numerous independent radio stations, arresting journalists, shooting at stations and destroying equipment. Radio Antilles Internationale, Radio Cacique, Radio Caraïbes, Radio Haïti Internationale, Radio Lumière and Radio Métropole all have been attacked and most have been forced to cease broadcasting. Journalists who have been arrested since the coup include Herald Gabiliste, Jean-Pierre Louis and Paul Jean-Mario of Radio Antilles; Frère Roday and a reporter known as Philiare of Radio Cacique; Miché Sully of Radio Galaxie; Michel Favard and Nicolas Sorenvile of Radio Nationale; Fernand Billon of Radio Soleil; Masner Beauplan of Collectif Kiskeya in Hinche; and Jean-Robert Philippe of the Voice of America. Other journalists have been physically assaulted or threatened by soldiers, or

denounced on the reconstituted state-run Radio Nationale, including Thony Belizaire of Agence France-Presse; Sony Bastien and Lylianne Pierre Paul of Collectif Kiskeya; Jean-Laurent of Radio Plus and an officer of the Association of Haitian Journalists; Edwidge Balutansky of Reuters; and Marvel Dandin of Radio Haïti-Inter. Paul Jean-Mario was badly tortured in the Petit Goâve military post and remains in detention.

The dead body of one journalist, Jacques Gary Siméon of Radio Caraïbe, was found shortly after his arrest by soldiers on the first day of the coup. On December 10, Felix Lamy, director of Radio Galaxie, was abducted from the radio station by heavily armed soldiers who also beat up two employees, shot at the station and destroyed equipment. The military government has denied responsibility for the abduction and Lamy's whereabouts are unknown. After this most recent attack, the last three independent radio stations broadcasting news — Radio Galaxie, along with Radio Métropole and Radio Tropic FM — ceased operations.

On November 12, between 100 and 150 students were arrested after the Federation of Haitian Students (FENEH), together with members of various popular organizations, held a press conference to support the OAS's call for immediate and unconditional restoration of President Aristide and to back its embargo against the military regime. The press conference was held the day after an OAS delegation arrived in Port-au-Prince to meet with members of the regime. The students' gathering was violently disrupted even as anti-Aristide demonstrations by Haiti's economic elite were allowed to take place elsewhere in Port-au-Prince. Several truckloads of heavily armed soldiers stormed the Science Faculty building at the State University of Haiti, where the press conference was held, and clubbed and arrested students and journalists. Some eight journalists were arrested and have since been released. Their equipment was destroyed and some had their press cards confiscated. One group of students was taken to the National Penitentiary and another group to the Anti-Gang Police Service detention center. Some were eventually transferred to the "Cafeteria" police station. Many of the students were badly beaten while in detention, according to several among them. After a court ordered all the students released, most were eventually freed. However, the army has refused to comply fully with the court order and at least forty are said by their lawyers and reputable Haitian human rights groups to remain imprisoned. The state-run Radio Nationale has denounced the students as "déchouqueurs" (lynch mobs), "thieves" and "drug-addicts."

Two additional killings occurred in the first hours of the coup. Sylvio Claude, a prominent politician and critic of President Aristide who had just given an anti-Aristide speech, was killed on September 29, the night before the president was ousted from the country, as the coup was underway. He was murdered in the area of Les Cayes, a city in the south, but there are conflicting reports of how he died. By one account, a crowd of Aristide supporters killed him after learning that a coup was in progress; by this account, soldiers may have tried to stop the crowd but retreated, fearing for their own lives. By another account, he was killed by soldiers in a military post under orders to eliminate this formerly popular politician as a player in post-coup Haiti.

The second killing involved Roger Lafontant, the convicted coup-plottor who was serving a term of life in prison. He was shot in his cell in the National Penitentiary on September 29. The current military government alleges that President Aristide ordered the killing. President Aristide's minister of planning, Renaud Bernardin, has alleged that it was probably a coup collaborator who killed Lafontant to prevent his emergence as a rival for power after the military takeover. Some of the other participants in the January coup attempt who had been convicted with Lafontant were freed or allowed to escape in the chaos provoked by the Lafontant shooting.

The Right to Monitor

Haitian human rights groups and international human rights organizations were allowed freely to monitor human rights violations under the Aristide government. Jean-Jacques Honorat, the civilian figurehead of the subsequent army-installed regime, complained that while President Aristide was in office, at a time when Honorat still headed the Haitian Center for Human Rights (CHADEL), he received threatening telephone calls. Throughout the period of the Aristide government, CHADEL issued a monthly newsletter on human rights in Haiti and received access to the National Penitentiary in Port-au-Prince. The threats may have been prompted by CHADEL's public stance against the popular intimidation of lawyers seeking to represent those accused of participating in the January coup attempt, as well as CHADEL's criticisms of serious due process violations at the trial of the alleged plotters, including sentences in excess of the legal maximum because of threats against the court by a crowd outside.

Under the *de facto* Honorat government, however, it has become very dangerous for Haiti's leading activists to continue to report on human rights. On October 2, three days after the coup, the Reuters news agency cited unnamed diplomatic sources to report that "troops were going door-to-door searching for aides to Aristide, cabinet ministers and human rights activists named on arrest warrants." Some human rights activists have fled the country or been forced into hiding. Others continue to monitor human rights under the military regime with extreme discretion.

Virginie Sénatus, head of the women's section of the Lafontant Joseph Center for the Promotion of Human Rights, was arrested on November 12 at the FENEH university students' press conference described above. Since then, Raynand Pierre, director of the Center; Loby Gratia, head of publications; and other members of the organization have been forced into hiding.

A member of the Platform of Haitian Organizations for the Defense of Human Rights was prevented from traveling outside the country on October 25 because his name appeared on a list at the international airport. The list, which he was shown, contained an estimated two hundred names. One other name he recognized was of a member of the FENEH student organization.

The Legal Assistance Group (GAJ), a member organization of the Platform coalition based in the northern city of Cap-Haïtien, has also been targeted. On October 1, the home of GAJ member Joseph Fernel Manigat was shot at and ransacked by soldiers, and some of his belongings were burned. Soldiers also stole equipment from the GAJ office.

U.S. Policy

The United States wields considerable political and economic influence in Haiti. By and large over the last two years, the Bush Administration has used its influence to promote respect for human rights in Haiti, but the refugee crisis sparked by the September 1991 coup has given rise to disturbing indications that the Administration has subordinated the promotion of human rights in Haiti to the goal of stemming the flow of refugees to the United States.

The Administration's strong insistence on peaceful, democratic elections in 1990 was an essential element in the success of the December elections that brought President Aristide to power with the support of

over sixty-five percent of the large number of voters who cast ballots. Speaking as head of the Administration's election-monitoring team, Assistant Secretary of State for Inter-American Affairs Bernard Aronson extended swift recognition to Aristide as the overwhelming victor, signaling to the army that Washington was intent on seeing the election results respected. The Administration was equally firm in denouncing the January 1991 coup attempt. Shortly after Aristide's inauguration on February 7, the U.S. Agency for International Development announced that it would provide over \$80 million in assistance for fiscal year 1991, some \$28 million more than the previous year.

In mid-August 1991, Vice President Dan Quayle visited Haiti at the end of a four-nation Latin American tour. He praised Haiti's progress toward democracy and promised increased U.S. assistance the following year. The vice president also signed two economic cooperation agreements with the Haitian government: one committing \$9 million in technical support for public administration, the other granting \$250,000 for anti-drug efforts.

Since the September coup, the Bush Administration generally has been forceful in its support for and continued recognition of President Aristide as the sole legitimate Haitian head of state. Statements condemning the coup were issued immediately by the U.S. Embassy and the State Department on September 30. On October 1, the day after the coup, in an important symbolic gesture, President Bush accepted the credentials of President Aristide's appointed ambassador to Washington, Jean Casimir, who had been a leading figure on the electoral council that organized the December 1990 election. President Bush told Ambassador Casimir that "despite the events of the last two days, the United States continues to recognize President Aristide as duly elected president of Haiti," according to a statement released by the White House. "We condemn those who have attacked the legally constituted democratically elected government of Haiti, and call for an immediate halt to violence, and the restoration of democracy in Haiti. We will be working closely with the OAS to bring that about," the White House statement read.

On October 2, in an emergency OAS meeting, Secretary of State James Baker condemned the coup in strong terms, saying that the United States "demand[s] the immediate restoration of President Aristide's constitutional rule. We have suspended all foreign assistance to Haiti. We do not and we will not recognize this outlaw regime." He added: "This junta is illegitimate. It has no standing in the democratic community. Until President Aristide's government is restored, this junta will be

treated as a pariah throughout this hemisphere — without assistance, without friends and without a future." He concluded, "this coup must not and will not succeed."⁹⁸

The suspended aid to which Secretary Baker referred included \$66 million of the \$85.5 million aid package for Haiti for fiscal year 1991 that had not been disbursed — \$84 million in economic and food aid and \$1.5 million in nonlethal military aid. Also suspended was the Administration's pending request for fiscal year 1992 of \$90.8 million, including \$88.6 million in economic and food aid and \$2.2 million in nonlethal military aid. On October 4, the Administration froze all Haitian government assets in the United States.

One week into the coup, however, the Bush Administration began to send mixed signals on Haiti, in contrast to its initial solid support for the deposed president. *The New York Times* reported that U.S. officials were "mov[ing] away from the unequivocal support they have voiced for the ousted Haitian President...citing concerns over his human rights record." According to the *Times*, "While strongly criticizing the Haitian military for carrying out the coup, these [Administration] officials now concede that Father Aristide's condoning and even encouragement of vigilante justice by mobs of his supporters in the streets has jeopardized his moral authority and popularity."⁹⁹

The Administration was justified in criticizing President Aristide for his posture toward the political intimidation of his opponents as well as the two acts of intimidation against the Haitian parliament and judicial system committed during his seven months in office. However, since these abuses paled in light of the utter brutality and wholesale disregard for human rights and democratic institutions shown by the successor military regime, the major reappraisal of U.S. policy that was briefly hinted was less understandable.

In fact, whatever reassessment of U.S. policy was considered quickly gave way to a reaffirmation of a pro-Aristide position. Responding on October 7 to questions from reporters about the Administration's support for Aristide, State Department spokesman Richard Boucher stated: "The responsibility of constitutionally elected leaders to safeguard human rights

⁹⁸ As reported in the State Department's *Dispatch*, October 7, 1991.

⁹⁹ Clifford Krauss, "In Policy Shift, U.S. Criticizes Haitian on Rights Abuses," October 7, 1991.

is one thing, but any problems in the human rights situation can't be resolved by overthrowing a democratically elected government."

Thereafter, the Bush Administration took additional steps to isolate the military junta. On October 29, it suspended all trade with Haiti, excluding basic foods and medicines and commercial flights, and ordered home all nonessential U.S. government employees and their dependents. According to Secretary Aronson, the U.S. trade cutoff meant a loss for Haiti of sixty-five percent of its imports and eighty-five percent of its exports. U.S. imports from Haiti in 1990 had amounted to \$339 million and U.S. exports to the country had totaled \$447 million.

In November, the State Department rejected the military government's proposal to hold new national elections on January 5, 1992. With Aristide supporters and popular organizations under continuing violent attack and President Aristide barred from returning to the country, the balloting would have been a meaningless exercise. Instead, the Administration reiterated its support for OAS efforts to negotiate a return to constitutional rule.

U.S. Ambassador to Port-au-Prince Alvin Adams is said to have played an important role in saving President Aristide's life on the day of the coup — negotiating his release from arrest and escorting him to the airport on his way into exile. Ambassador Adams also issued a strong statement on October 24 condemning human rights violations since the coup. He cited the arrest of prominent Aristide supporters Evans Paul, Manno Charlemagne and Antoine Izmary, indiscriminate killing, warrantless raids on private homes and radio stations, police harassment, and mistreatment "in the custody of Haiti's *de facto* authorities."

The Bush Administration's position on refugees fleeing the country is considerably less supportive of Haitians' human rights. The Administration insists that most of the Haitian refugees are fleeing economic conditions rather than political persecution,¹⁰⁰ despite the widespread arrests, beatings and killings of Aristide supporters and perceived opponents of military rule, and the Administration's appropriate refusal to recognize the legitimacy of the lawless and brutal military regime. Pursuant to an agreement reached between the Reagan Administration and former Haitian dictator Jean-Claude Duvalier, the U.S. Coast Guard has continued to interdict Haitians fleeing by boat and,

¹⁰⁰ See, e.g., statement of State Department spokeswoman Margaret Tutwiler at press briefing on November 20, 1991.

after cursory interviews by immigration officials aboard Coast Guard cutters, forcibly returned them to Haiti.

Some 538 Haitian refugees had been forcibly repatriated since the coup when, on November 19, U.S. District Judge Clyde Atkins ordered a temporary halt to the practice. He reaffirmed his decision on December 3 by issuing a preliminary injunction, basing his decision on the finding that if the refugees were sent back they would face "loss of liberty or death at the hands of Haiti's military on account of [their] political beliefs."¹⁰¹ The Bush Administration made vigorous efforts to reverse the injunction, including the unusual decision to call on Solicitor General Kenneth Starr to argue a case in the lower federal courts. The Administration argued principally that the refugees had no right to challenge the repatriations in U.S. court because, in the Administration's view, the international prohibition against *refoulement* (the sending of an individual to a land where he or she is likely to face political persecution) does not apply until the refugee has entered U.S. territory. This narrow view of the law ignored the Coast Guard's role in preventing the Haitian refugees from reaching U.S. soil, where the prohibition against *refoulement* clearly does apply. It also contradicted an August 11, 1981 opinion of Assistant Attorney General Theodore Olson, head of the Justice Department's Office of Legal Counsel, which cited the principle of *refoulement* as giving protection to interdicted Haitians. On December 17, however, a federal appeals court endorsed this argument and lifted the injunction. A new restraining order was promptly imposed by Judge Atkins but once again reversed by the appeals court on December 19.

At the same time as the Administration was contesting the injunction, the Coast Guard began holding what quickly became some 7,400 refugees at the U.S. naval base at Guantanamo, Cuba.¹⁰² The effect was to deny the Haitians easy access to legal counsel to prepare asylum claims or the benefit of a hearing of their claims by an immigration judge rather than a low-level immigration official. Even under these conditions, 1,012 Haitians were found by December 17 to have plausible asylum cases,

¹⁰¹ Will Lester, "Judge Extends Ban on Return of Haitian Boat People," Associated Press, December 4, 1991.

¹⁰² By contrast, only 1,351 Haitians fled the country during President Aristide's seven-month tenure, according to State Department spokeswoman Tutwiler on December 3, 1991.

allowing them to be brought to the United States to pursue their claims with the assistance of counsel and full procedural rights.

The Administration's efforts to halt the flight of Haitian refugees appears to have colored its human rights advocacy in Haiti. Haitians began fleeing by boat in large numbers approximately one month after the coup, as widescale acts of political violence continued and the prospect of President Aristide's quick return to office dimmed. At the same time, the Administration stopped publicly criticizing human rights abuses under the military regime. Following Ambassador Adams's October 24 statement described above, and the October 29 imposition of sanctions, no public denunciation of abuses was made by the State Department or the U.S. Embassy. The timing of the sudden silence left the impression that the Administration was more concerned with avoiding lending support to the growing number of Haitians claiming to be fleeing political persecution — or prejudicing the court case challenging interdiction — than with pressing the military regime to stop the violence and killing.

We recognize that one element in this sudden silence may have been the U.S. Embassy's diminished capacity to monitor the human rights situation. With Embassy staff reduced to "essential" personnel out of concern for their safety, an Embassy official told our investigative mission in December that the Embassy lacked the capacity to investigate human rights violations and was dependent on reports of abuses received from others. This diminished capacity to monitor the human rights situation calls into question assurances repeatedly given by the Administration that Haitians, if forcibly repatriated, would not face political persecution. Indeed, the decision to define Embassy personnel assigned to monitor human rights as "nonessential" suggests that the Administration may not have wanted to know the full extent of political persecution in Haiti for fear of compromising its defense of interdiction.

Moreover, subsequent developments suggest that the Administration may be allowing fear of an influx of Haitian refugees to influence the veracity of its human rights reporting. On December 13, the State Department's Office of Asylum Affairs — part of the Bureau of Human Rights and Humanitarian Affairs — issued its first opinion on human rights conditions in Haiti since the coup. The opinion is important because it is used by asylum adjudicators in assessing Haitian claims to be fleeing political persecution. The opinion flies in the face of extensive evidence of ongoing persecution of perceived military opponents and Aristide supporters, including the cases of persecution cited above, by asserting: "[A]t this time we have no reason to believe that mere

identification of an individual as an Aristide supporter puts that individual at particular risk of mistreatment or abuse."

The State Department opinion also claimed: "There is no indication that persons returned [to Haiti] by the U.S. under the interdiction program are detained or subject to punishment by Haitian authorities."¹⁰³ As noted, such a statement is suspect in any event in light of the Embassy's diminished capacity to monitor even the general human rights situation in Haiti, let alone to engage in the difficult task of tracing returned Haitians to ensure that they have not suffered persecution as a result of their flight. More important, the statement is inconsistent with the interest shown by Haitian soldiers in the political activities of returning Haitians, as detailed in a State Department cable describing the December 3 voluntary return to Haiti of seventy-three Haitians who had fled by boat and, after interdiction, been housed temporarily in Venezuela. According to the cable, soldiers rather than customs officials questioned the returning Haitians and thoroughly searched their persons and luggage. The cable recounted: "Soldiers told Embassy staff they were looking for 'everything' and that they read repatriates' letters and papers to find anything 'compromising.' Repatriates reported [that soldiers] questioned them to determine whether they are politically active." The cable describes the repatriates then being taken to police headquarters before, according to the police, being released.

Other International Actors

The OAS has been at the forefront of international efforts to restore President Aristide to office. It reacted swiftly and vigorously to the September military coup, pursuant to a resolution adopted by the OAS General Assembly the previous June requiring immediate consultations among governments if any elected government in the hemisphere is forcibly overthrown. On September 30, the day of the coup, the Permanent Council of the OAS, responding to "the grave events that have taken place in Haiti and that represent an abrupt, violent and irregular interruption of the legitimate exercise of power by the democratic

¹⁰³ A similar theme was sounded by State Department spokesman Boucher on November 18 and spokeswoman Tutwiler on November 21, 1991.

government of that country," issued "its most vigorous condemnation of those events and of their perpetrators" and demanded "adherence to the Constitution and respect for the Government, which was legitimately established through the free expression of the will of that country's people." The OAS also

deplore[d] the loss of human lives;...demand[ed] that those responsible be punished; and... [insisted] that, in strict observance of international law, those parties put an end to the violation of the Haitian people's rights, respect the life and physical safety of President Jean-Bertrand Aristide, and restore the President's exercise of his constitutional authority.

The OAS invited President Aristide to speak to it in Washington on October 2.

Pursuant to an OAS resolution, a hemisphere-wide economic embargo was imposed pending the re-establishment of the Aristide government. OAS delegates have literally risked their lives while attempting to negotiate with the military regime. On October 7, when an OAS delegation was meeting in a room at the Port-au-Prince airport with General Raoul Cédras, head of the military junta, heavily armed soldiers burst in and disrupted the discussions. The OAS delegation quickly fled the country.

In the first week of December, the OAS sent a mission to Haiti to investigate human rights violations since the coup. A statement issued a week earlier by the OAS Inter-American Commission on Human Rights expressed alarm that an estimated 1,500 people may have been killed since the coup.

The United Nations General Assembly also condemned the coup in a resolution adopted on October 11. The resolution called for the restoration of President Aristide and appealed to member states to take measures in support of OAS resolutions on Haiti.

In November, French Ambassador to Port-au-Prince Rafael Dufour was recalled to Paris under intimidation by the Haitian military regime for refusing to disclose the names of those who had sought refuge in the French Embassy. He, too, played an important role in ensuring President Aristide's physical safety on September 30 by riding with him in a vehicle from the president's besieged residence to the downtown palace and helping to arrange his safe passage out of the country. Until his expulsion, Ambassador Dufour was among the most outspoken critics of

the military regime, despite army attacks on his residence, including the cutting off of telephone service, electricity and running water to the building, where prominent supporters of Aristide and members of his government are believed to have sought protection. France has suspended \$36 million in foreign aid to Haiti.

Canada and Venezuela, among Haiti's top aid donors, as well as the European Community and the World Bank, also suspended their aid programs in the days following the coup.

The Work of Americas Watch

Americas Watch continues to cooperate closely with the National Coalition for Haitian Refugees (NCHR) in its work on Haiti. In November, the two organizations published our twelfth report on Haiti since 1983, the fourth issued together with Caribbean Rights. The report, *Haiti: The Aristide Government's Human Rights Record*, was based on five fact-finding missions to Haiti between February and September 1991. In preparation at the time of the September 30 coup, the report was released one month later to address the growing controversy over President Aristide's human rights record. The report set forth the positive and negative aspects of President Aristide's human rights policy, while stressing that even the worst of the president's failings did not begin to compare with the large-scale atrocities committed by his military successors.

Since the coup, Americas Watch and the NCHR issued several press releases condemning the army's actions and criticizing human rights abuses. Two representatives from the organizations, together with a representative of Physicians for Human Rights, undertook a fact-finding mission to Haiti in early December to document human rights violations under the military regime. A report of the mission's findings, *Return to the Darkest Days: Human Rights in Haiti Since the Coup*, was released in late December.

Americas Watch has also spoken out on several occasions, including in the December report, in opposition to the Bush Administration's efforts to force Haitian refugees to return to Haiti under the violent regime in Port-au-Prince.

HONDURAS

Human Rights Developments

Hondurans continued during 1991 to suffer grave human rights violations at the hands of the police and military, including murder, torture, illegal detention, threats and harassment. A decade of elected civilian government has failed to address these abuses. Insurgent groups claimed credit for several political assassinations or attempted assassinations during the year, despite a partially successful government effort to encourage their conversion into a peaceful political opposition.

There were no disappearances in 1990 or 1991, marking a possible end to a cruel practice carried out by government forces during the 1980s. However, the government's failure to provide an accounting for scores of disappearance victims over the past decade or to bring to justice any of the perpetrators among the security forces, accommodates the fear that those who resorted to this practice in the past may feel free to do so again should they deem it necessary. Although serious and well-documented abuses by the army in 1991 led to the initiation of judicial proceedings against several military men, including officers, none yielded trials or convictions, leaving the military's well-guarded impunity for human rights abuses intact.

Implementation of a harsh economic austerity program during the year deepened social tensions and inspired widespread labor actions and peasant invasions of land. Labor leaders reported receiving anonymous death threats, and one labor conflict was violently repressed by the army. In late October, soldiers seeking to oust striking miners who had occupied the El Mochito mine in the department of Santa Bárbara killed one miner and wounded twenty others at the U.S.-owned mine, according to the Committee for the Defense of Human Rights in Honduras (CODEH). Press reports indicated that miners injured at least three military men with stones after the army fired on the miners.¹⁰⁴

Rural violence increased significantly in 1991. The provinces of Santa Bárbara, Cortés and Yoro were the scene of massive land invasions in the month of May; in response to one of these actions, on May 3, a

¹⁰⁴ Inter Press Service, "Honduras: U.S. Mining Company Suspends Operations," October 26, 1991.

group of soldiers and plainclothesmen in the employ of an army colonel massacred five peasants and wounded eight in the village of Agua Caliente, in the worst episode of rural violence since the 1970s.¹⁰⁵ Another mass slaying — this time of four peasants in the eastern province of Olancho — was reported by the Honduran press to have occurred on November 2, allegedly at the instigation of an army colonel. Denying any official involvement, the police have detained eight suspects, two of whom later told a reporter that they had been severely tortured to extract confessions.¹⁰⁶

There was detectable change in the political climate in 1991, which tended to encourage respect for human rights, although the government of President Rafael Callejas failed seriously to address the nation's continuing human rights problems, such as the use of torture by the police and army, and violence against peasants engaged in conflicts over land. With the end of the *contra* war in Nicaragua, civilian politicians in Honduras have begun to seek a reduction in the dominant power of the military. They have found a new ally in the Bush Administration, which is pressing Honduras to reduce its budget deficit. Given the fiscal crisis and the lack of any security imperative, Washington views reducing military spending as an essential step to economic health. The army and the Callejas government have reacted angrily to suggestions of demilitarization, whether coming from members of the political opposition or the U.S. Embassy.

The Callejas government in 1991 advanced a policy of national reconciliation that included an amnesty for "political and related common crimes" committed before July 24, 1991. The amnesty led to the release of thirteen prisoners held for politically motivated crimes; the torture by the security forces of several of these prisoners after their arrests in 1989

¹⁰⁵ See Americas Watch, "Honduras: Torture and Murder by Government Forces Persist Despite End of Hostilities," June 6, 1991, pp. 4-5. The government's Agrarian Reform Institute (INA) had given the land in dispute to the peasant group known as *El Astillero* in 1977, but a corrupt agrarian reform official illegally sold it nearly a decade later to the army colonel, Leonel Galindo. Although the peasants had petitioned INA for the return of the land, the agency had taken no action at the time of the massacre.

¹⁰⁶ Inter Press Service, "Alleged Killers Denounce Police Torture," November 19, 1991.

and 1990 was documented by Amnesty International in a report released in June.¹⁰⁷ The amnesty also led to the release of some three hundred peasants charged with "terrorism" in connection with land invasions.

While Americas Watch is not opposed to amnesties intended to foster national reconciliation, we oppose applying amnesties or pardons to parties — be they members of government or insurgent forces — who are responsible for gross violations of human rights, such as extrajudicial execution, disappearance and torture. The amnesty as enacted covers not only members of the military accused of crimes against the state, such as rebellion and sedition, but also those accused of crimes against civilians, including homicide and assault.¹⁰⁸ It thus makes official the *de facto* impunity enjoyed by the military for more than 140 disappearances and hundreds of acts of torture committed since the early 1980s. Americas Watch considers the inclusion of these crimes in the amnesty law to be a breach of Honduras's duty to prosecute gross violators of human rights. It is one more signal to the armed forces that they may torture and murder without fear of punishment.

Political assassinations continued in 1991 and, as in the past, the government made no serious effort to investigate or prosecute them. Some were part of the rural violence described above, as were the murders of peasant activist Moisés Castillo, who while handcuffed was allegedly pushed in front of a speeding truck by his arresting officers on February 19,¹⁰⁹ and indigenous leader Vicente Matute, who was shot dead along with his companion, Francisco Guevara, on September 30. Testimony given to CODEH suggests that the shooting of Matute and Guevara was arranged by a family engaged in a land dispute with an indigenous tribe in the department of Yoro. Matute was apparently trying to settle the land dispute, and had twice been threatened by individuals connected to the family. In addition, on December 9, a high-ranking peasant leader, Manuel de Jesús Guerra, was shot dead; according to the National Confederation of Rural Workers, he was involved in solidarity work with the electrical workers union, which is engaged in a bitter labor

¹⁰⁷ Amnesty International, *Honduras: Persistence of Human Rights Violations*, June 1991, pp. 20-22.

¹⁰⁸ Articles 215 & 216, Title VI, Chapter I, of the Military Code.

¹⁰⁹ See Americas Watch, "Honduras: Torture and Murder," p. 5.

dispute with the government.

Two of Honduras's minute insurgent groups — the Morazán Patriotic Front (FPM) and the Cinchoneros — claimed credit for several political killings and assassination attempts during the year. As has been the tradition in the case of assassinations committed by government forces, political assassinations attributed to the guerrillas have not led to prosecutions, even when the victims were members of the military. Among the guerrillas' apparent victims in 1991 were Sergeant José Blas Peña Paz, shot dead in his garage on May 26; cattle rancher Pablo Padilla García; and Raúl Arnulfo Suazo Madrid, a right-wing university activist. Little is known about the violent left-wing opposition groups. They appear to be deeply divided and, according to credible sources, possibly infiltrated by the military. Often insurgent communiques claiming credit for attacks are followed by others denying it. For example, the FPM originally claimed responsibility for the slaying on October 4 of Suazo Madrid, but subsequently denied involvement. Similarly, the Cinchoneros claimed credit for the May 25 assassination attempt against Roger Eludín Gutiérrez Rosales — a former Cinchonero leader who had recently returned from exile and renounced the armed struggle — only to deny responsibility a week later and instead blame the armed forces. According to CODEH, the family of cattleman Padilla García, whose June 20 assassination was claimed by the Cinchoneros, has denied that the guerrillas were responsible.¹¹⁰

The murder on July 22 of Marco Tulio Hernández, the son of a human rights leader and an activist himself, also remains unresolved. Although the gunman was quickly apprehended, he has changed his story several times, leaving his motive in doubt. Nonetheless, Americas Watch is aware of no evidence linking the security forces to the murder of Hernández, although the victim — who had been living in Italy — told a relative before his death that he had been warned to "be careful" by an immigration official when he returned to the country on June 14. Still, the authorities do not appear to be actively pursuing the case. Although the gunman has named an accomplice, he has not been apprehended.

A far larger number of killings occurred without any apparent political motive. As CODEH noted in its report on the first six months of 1991:

¹¹⁰ CODEH, *Informe: Violaciones a Los Derechos Humanos en Honduras, Enero - Junio 1991*, Tegucigalpa, p. 9.

Contrary to what occurred in the 1980s, when we denounced a greater number of violations committed against persons belonging to the organized political opposition to the government, a conscientious analysis of the current violations reflects that this is no longer the case. Rather, any citizen who is not to the liking of a military officer is open to having his or her fundamental rights violated with impunity.¹¹¹

CODEH reported sixty killings between January and September 1991 as "abuses of authority." One example, the murder of seventeen-year-old student Riccy Mabel Martínez, shocked the nation and fueled a growing anti-military sentiment. It also riveted attention on the question of whether civilian or military courts should have jurisdiction over human rights crimes.

On July 13, Martínez visited the army's First Communications Battalion to ask two officers — Colonel Angel Castillo Maradiaga and Captain Ovidio Andino Coello — to release a friend of hers who had been recruited at the base. Her body was found hours later, reportedly unclothed and with the genitals and other organs cut out. Both military and civilian courts claimed jurisdiction over the crime, a recurring conflict in Honduras. Both claimed to have the Constitution on their side.

The relevant articles of the Constitution state that military courts have jurisdiction over military crimes, except "[w]hen a civilian or a retired member of the military is implicated in a military misdemeanor or felony," in which case civilian courts have jurisdiction.¹¹² The military has interpreted these articles to give its tribunals jurisdiction over all crimes by the military, including those in which a member of the military (including the police, which operate under military command) commits a crime against a civilian. However, many respected Honduran attorneys consulted by Americas Watch, including current Attorney General Leonardo Matute Murillo, interpret these articles to give civilian courts jurisdiction over cases in which a civilian is the victim of a crime by a member of the military or police. The trying of military offenders in military courts, where a lack of impartiality has guaranteed gentle

¹¹¹ CODEH, *Informe, Enero - Junio 1991*, p. 5 (translation by Americas Watch).

¹¹² Articles 90 and 91, Constitution of the Republic of Honduras (translation by Americas Watch).

treatment of defendants in crimes against civilians, is one of the foundations of impunity for human rights violations in Honduras.

After unprecedented public pressure for prosecution, including a public statement by U.S. Ambassador Cresencio Arcos, the army wiggled out of the dilemma in the Martínez case by dismissing the accused officers. This had the effect of ceding jurisdiction to the civilian court while averting a Supreme Court decision on the matter — a precedent which army officers apparently feared. The accused officers are now in pretrial detention at the disposal of the Second District Court in Tegucigalpa. However, a conviction is by no means assured, as several witnesses have failed to respond to court citations, apparently out of fear. Although the U.S. Federal Bureau of Investigations (FBI) conducted a forensic analysis of samples of blood, hair, semen and urine purportedly collected from the suspects with samples found on or near the victim's body, there are widespread suspicions that the military or the government's medicolegal department may have tampered with the evidence.¹¹³

In the Martínez case, the civilian judge aggressively defended her court's jurisdiction. In many other cases, however, civilian judges have chosen to avoid the risk of taking on the military. For example, a civilian court neither investigated nor challenged military jurisdiction when, on June 9, an intoxicated senior officer, Colonel Erick Sánchez, allegedly shot and seriously injured an unarmed man in a restaurant in the coastal town of La Ceiba. The victim, Gustavo Fúnez Rodríguez, remains paralyzed from his injuries. A military tribunal acquitted the influential officer. Linda Rivera, the attorney for the victim, has complained to the Supreme Court about the civilian tribunal's passive posture.¹¹⁴

¹¹³ The FBI did not collect the samples. It simply analyzed those provided by the medicolegal department of the Ministry of Health and reported its findings to the judge. The U.S. Embassy was later surprised to learn that the medicolegal department had sent different samples for a private forensic analysis and provided a separate forensic report to the judge. According to press reports, this forensic report exonerates the defendants. (Cristina González, "Honduran justice system called into question," *Latinamerica Press*, November 14, 1991, p. 5.)

¹¹⁴ "Embajada de Estados Unidos indaga sobre el juicio contra coronel Erick Sánchez," *Tiempo*, November 7, 1991.

There appears to have been no letup in the use of torture by the police, largely because of the authorities' consistent failure to punish those responsible. CODEH reported 119 cases of torture between January and September 1991. The police, most often the National Directorate of Investigations (DNI), regularly torture both political and common-crime suspects to obtain confessions. Methods used include severe beatings, suffocation with a rubber hood called the *capucha*, and application of electric shocks. In response to public complaints about torture, President Callejas promised to restructure the DNI, but has made no visible progress.

Often torture is used to extract confessions, as was the case with five civilian suspects detained by the police in connection with the murder of five individuals in the village of El Bálsamo, Yoro, on August 18. The five men had apparently been on patrol with police agents on the night of the killings. The police later arrested and beat them until they confessed to the slayings. They were released by a judge on September 11. A police spokesman eventually acknowledged that the men had been severely beaten. A DNI agent, Elmer Burgos, was consigned to a military court because of the ill-treatment.

In September, upon U.S. prompting, the Honduran police instituted an Office of Professional Responsibility (OPR), which is supposed to process civilian complaints about police behavior. The initial information provided by the office is insufficient to determine whether it is addressing human rights violations. Police commander Colonel Guillermo Paredes announced to the press on October 29 that the OPR had investigated ninety cases of alleged corruption or abuse of power by police agents, and that unspecified sanctions had been imposed on fifty-two police agents. Neither the names of the offending officers nor the abuses for which they were said to have been disciplined have been made public. As best as could be ascertained, no officer has been criminally punished for committing acts of torture.

The Right to Monitor

Domestic human rights monitors in the past have faced open hostility from the Honduran military and the U.S. Embassy. Under Ambassador Arcos, the Embassy has adopted a more positive attitude. However, domestic rights activists still occasionally face official harassment and anonymous threats. On July 18, police in the village of Támara, in San

Pedro Sula, detained Marcelino Martínez, a CODEH representative, for a little over twenty-four hours. The police threatened him and tried to force him to sign a document saying he had refused to show them his identity card. It is unclear whether this ill-treatment was related to Martínez's human rights work. In addition, several activists affiliated with the Committee of Families of the Disappeared reported being subject to telephone threats, harassment and surveillance during 1991.

Much of the credit for increased consciousness about human rights in Honduras goes to Honduran journalists, some of whom have covered human rights cases quite seriously, such as the murder of Riccy Mabel Martínez and the massacre of five peasants in Agua Caliente. One reporter who over the years has consistently published news unfavorable to the military told Americas Watch that her house was constantly watched and that she had received many anonymous telephone threats. Two other radio reporters covering the Martínez case reportedly received death threats and warnings to cease their coverage.

International human rights groups did not experience problems in monitoring Honduras in 1991. The government responded to reports issued in 1991 by Americas Watch and Amnesty International with fierce criticism of both groups, but placed no obstacles in the way of a subsequent visit by Americas Watch. The government has also remained open to dialogue with Americas Watch about human rights issues.

U.S. Policy

U.S. policy has changed so radically in Honduras that the Embassy, not long ago seen as the strongest defender of the Honduran military, is now seen as one of the military's tougher critics. While just three and a half years ago protesters attacked and set fire to part of the U.S. Embassy compound, in 1991 demonstrators gathered at the site to praise Ambassador Arcos after he publicly called for a thorough and "transparent" investigation into the murder of Riccy Mabel Martínez. While he took no public position on the question of jurisdiction, Arcos is said to have privately urged civilian leaders to stand up to the military, according to *The Miami Herald*.¹¹⁵ In addition, as noted above, the

¹¹⁵ Christopher Marquis, "In Honduras, outrage grows over a murder," *The Miami Herald*, August 11, 1991.

Embassy provided forensic assistance from the FBI.

Although Ambassador Arcos's public statements have been couched in diplomatic language, and have for the most part refrained from directly blaming the armed forces for violent abuses, they have been received as slaps in the face by a political-military establishment long accustomed to blind acceptance of its abuses by Washington. The possibility that Arcos might be declared *persona non grata* was publicly discussed by top Honduran officials in October, after he was quoted in the press discussing the need to reduce the budget deficit in Honduras and expressing irritation over the medicolegal department's handling of the forensic evidence in the Martínez case.

Yet, while Honduran authorities may find the Embassy's comments on human rights cases to be overly meddlesome, we find U.S. policy still too indulgent of human rights violations. Diplomatically worded criticism notwithstanding, Washington continues to provide Honduras with substantial sums of military and economic aid as well as training and equipment for the Honduran police. The Administration has not used the influence that flows from this aid as leverage for human rights improvements. In fiscal year 1991, Honduras was allocated \$30 million in military aid, up from \$20 million in 1990. In addition, Washington will provide \$1.1 million for military training, \$60.9 million in economic support funds, and \$51.8 million in development and food aid. The Bush Administration also forgave \$430 million worth of loans owed by Tegucigalpa to Washington. For fiscal 1992, the Administration has requested \$20.2 million for military aid and training for Honduras.

In 1990, Americas Watch hailed the State Department's decision to cancel Honduras's participation in police training under the State Department's anti-terrorism assistance plan because of police brutality and torture. This sanction has ended, according to the State Department, because Honduran officials have indicated a willingness to address abuses by the police. Yet we see no signs that the Honduran police has stopped torturing detainees, nor have we seen evidence of police officers convicted for such abuses. Under these conditions, we find unjustified the renewal of police assistance, even for such programs as anti-terrorism assistance, which focuses on airport security, and criminal-investigations training, which is supposed to decrease reliance on coerced confessions in favor of the use of physical evidence.

The Work of Americas Watch

On June 6, Americas Watch issued a newsletter, "Honduras: Torture and Murder by Government Forces Persist Despite End of Hostilities," which received wide coverage in the Honduran press. Although President Callejas rejected the conclusions of the report — principally, that his government had not, after more than a year in office, exercised the political will to end abuses — the subject of human rights was brought to a high level of public attention and remained there for several weeks with the release a short time later of a report by Amnesty International reaching similar conclusions.

To follow up on the report, an Americas Watch representative traveled to Honduras in October, meeting with officials of the Honduran government and U.S. Embassy, as well as human rights activists and attorneys. In addition, Americas Watch corresponded with the Callejas government throughout the year on specific cases of human rights violations.

Americas Watch participated in the successful litigation against Honduras before the Organization of American States (OAS) Inter-American Court of Human Rights in which the Court found Honduras responsible for the disappearance of a student and a teacher in 1981 and 1982 respectively.¹¹⁶ To date, the Honduran government has failed to comply fully with the Court's rulings concerning damages to the victims' families. In June, Americas Watch asked the General Assembly of the OAS, which was meeting in Santiago, Chile, to recommend that Honduras comply fully with the Court's orders. Honduras managed to derail the debate, but in the process told a representative of a nongovernmental organization that full payment was under study.

¹¹⁶ See *News from Americas Watch*, "Honduras" Inter-American Court of Human Rights Wraps Up First Adversarial Case," September 1990; Juan E. Méndez and José Miguel Vivanco, "Disappearances and the Inter-American Court: Reflections on a Litigation Experience," *Hamline Law Review*, Summer 1990; and *News from Americas Watch*, "Honduras: Torture and Murder," pp. 10-11.

MEXICO

Human Rights Developments

During 1991, pressure mounted on the government of President Carlos Salinas de Gortari to improve human rights conditions in Mexico. Americas Watch and other international human rights organizations, in cooperation with an expanding network of non-governmental human rights activists in Mexico, focused national and international attention on numerous ongoing abuses in the country. These include murder, torture and other abuses by federal and state police; violence associated with electoral fraud; violations of labor rights; rural violence; threats against human rights monitors and journalists; and impunity for just about everyone who engages in such abuses.

The pressure came as Mexico and the United States proceeded with negotiations of a free-trade accord. Ratification of a North American Free Trade Agreement, a goal announced by the two nations in June 1990, is a cornerstone of President Salinas's economic policy. His government has worked hard to anticipate and deflect criticism from Washington concerning Mexican domestic policies. One component of this effort has been an extensive campaign to improve Mexico's human rights image.

Following the May 1990 murder of human rights activist Norma Corona Sapién, the Salinas government instituted a series of reforms, including the establishment of a National Human Rights Commission (CNDH) and the implementation of legal and institutional reforms and personnel changes. In a handful of serious, high-profile cases, progress has been made toward identifying and prosecuting those responsible for violent abuses.

Despite these reforms, many steps that are necessary to realize permanent human rights improvements have not been taken.¹¹⁷ The Salinas government has paid scant attention to rights abuses that do not relate to the administration of justice. Rural violence, particularly unannounced forced evictions of peasants from their homes by police

¹¹⁷ For a more detailed description of reforms taken in 1990, see Americas Watch, *Unceasing Abuses: Human Rights in Mexico One Year After the Introduction of Reform*, September 1991, pp. 3-8.

working in cooperation with local rural bosses, is ongoing and unchecked. Human rights activists and journalists have been threatened, and labor activists who oppose government-affiliated unions have found their right to freedom of expression trampled. The fraud and corruption that marred the August 1991 mid-term elections contributed to a highly charged political climate, which in the past has sparked violence.

More fundamentally, the Salinas government has not reversed Mexico's long-standing policy of impunity for those who commit human rights abuses. Hundreds of cases of disappearance — some more than twenty years old — remain unsolved and their perpetrators unpunished. The use of torture by federal and state police — notwithstanding the many reforms introduced to combat the practice — remains routine. Adequate investigation of torture allegations is rare. Even when a serious investigation occurs, the will is often lacking to prosecute and punish the responsible officers and their superiors. If the human rights reforms introduced by the Salinas government are to succeed, they must be supported by a firm and consistent determination to throw the book at *all* those responsible for torture and other human rights abuses.

A positive development in the face of a worsening human rights situation was the June 1990 formation of the National Human Rights Commission, a government agency headed by respected Supreme Court Justice Jorge Carpizo, who reports directly to President Salinas. The CNDH has some three hundred staff members, including approximately sixty lawyers responsible for investigating complaints. As of September 1991, the commission had received more than two thousand admissible complaints of recent serious violations of human rights by government agents, including numerous cases of illegal deprivation of liberty, torture, death threats and homicide.

In that time, the commission had issued 119 recommendations. Many concerned highly publicized cases or cases on which non-governmental human rights groups had focused. Other cases, many equally serious, first received public attention as a result of the CNDH recommendations. While the majority of the recommendations have been directed to state government officials, thirty were sent to the federal attorney general and another three were sent to the Defense Ministry. Many called for the prosecution of agents who had committed the abuse and their superior officers.

The CNDH lacks prosecutorial powers and depends on publicity and the influence of Dr. Carpizo, backed by President Salinas, to enforce its recommendations. President Salinas has decreed that all prosecutors,

police and other government agencies are to cooperate fully with commission investigations. In some cases, he has condemned human rights violations under consideration by the CNDH or called for a CNDH recommendation to be implemented. But President Salinas has avoided public confrontation with state government officials or agencies of the federal executive branch that ignore or reject CNDH recommendations.

During its first year, the CNDH was routinely stymied by Federal Attorney General Enrique Alvarez del Castillo and a number of state officials who refused to comply with CNDH recommendations or did an end run around the CNDH by promising to "investigate" a CNDH recommendation while in fact doing nothing.¹¹⁸ In several highly publicized cases involving abuse by officers of the Federal Judicial Police, Attorney General Alvarez del Castillo either impeded the commission's investigation or refused to carry out its recommendations.¹¹⁹

Since Alvarez del Castillo was replaced by Ignacio Morales Lechuga in May 1991, there have been significant developments in several highly publicized cases, including some in which Alvarez del Castillo had defied CNDH recommendations. Antonio Valencia Fontes, the attorney for relatives of the November 1989 disappearance victim Sergio Machi Ramírez, was released a month after Morales Lechuga became federal attorney general. Shortly after the disappearance, Valencia Fontes and four friends and relatives of Machi Ramírez had been arrested, held incommunicado and tortured. They were incarcerated on trumped up charges for a year and a half before Morales Lechuga dropped the charges and the five were freed. Valencia Fontes is seeking indemnification for wrongful imprisonment and mistreatment.

Morales Lechuga moved to clean up the human rights mess left by Alvarez del Castillo. He took action in the May 1990 Aguillilla case, which resulted from a heavy-handed anti-narcotics raid in Michoacán.¹²⁰ President Salinas in December 1990 publicly expressed his support for a November 1990 CNDH recommendation that had called for a complete

¹¹⁸ The federal attorney general heads the *Procuraduría General de la República* (PGR). The investigative branch of the *Procuraduría* is the Federal Judicial Police.

¹¹⁹ See Americas Watch, *Unceasing Abuses*, pp. 3-5.

¹²⁰ See Americas Watch, *Unceasing Abuses*, p. 10; and Americas Watch, *Human Rights in Mexico: A Policy of Impunity*, June 1990, pp. 15-16.

investigation into the events in Aguililla, the release of four men imprisoned following the raid, and the punishment of all police who committed human rights abuses. Two of the men were released in December 1990, but two others remained incarcerated until Morales Lechuga dropped charges against them on June 26, 1991. Morales Lechuga's office announced in late September that it had taken criminal action against a Federal Judicial Police commander, a Public Ministry agent in Michoacán state, and others responsible for human rights violations related to the raid.

But there has been no resolution in one of the most brutal cases in which the CNDH and the federal attorney general's office collided. On January 14, 1990, agents of the Federal Judicial Police murdered in cold blood Erick Dante, Jaime Mauro and Héctor Ignacio Quijano Santoyo.¹²¹ One year later, the CNDH issued a recommendation calling on the federal attorney general to begin an immediate full-scale investigation into the murders and asked that named Federal Judicial Police agents be investigated. It further called on the attorney general to suspend the suspects from duty and to begin criminal proceedings against all who participated in the crimes. However, none of the agents named in the case has yet been charged for the murders, including one who was arrested in December 1990 in a separate case for leading Federal Judicial Police anti-narcotics agents in killing six civilians in Angostura, Sinaloa. Indeed, in December 1990, one of the officers — Roberto Velázquez Quiroz — was promoted to first regional commander of the Federal Judicial Police in Reynosa, Tamaulipas.¹²²

The May 1991 dismissal of Federal Attorney General Alvarez del Castillo, who had come under increasing domestic criticism, was welcomed by human rights groups. His highly publicized battles with the CNDH had inspired opposition members of Congress to sponsor a bill of

¹²¹ See Americas Watch, *Unceasing Abuses*, pp. 12-13. See also the case of Francisco Quijano García, father of the victims and a vocal critic of police misconduct, who disappeared in June 1990. The PGR would not allow a CNDH investigator access to police detention facilities immediately following his disappearance. Quijano García's corpse was found in a private residence in March 1991. (*Ibid.*, pp. 3-4.)

¹²² See Americas Watch, *Unceasing Abuses*, pp. 17-18.

impeachment.¹²³ Although the connection was never proved, many Mexicans took for granted that the federal attorney general's office was responsible for the April 1991 bugging of the CNDH offices.¹²⁴ And in the weeks immediately preceding his ouster, Federal Judicial Police officers under his authority were implicated in the bloody takeover of the prison in Matamoros, Tamaulipas. Eighteen inmates were killed in ending the thirteen-day revolt by prisoners loyal to drug kingpin Oliverio Chávez Araujo.¹²⁵

Since Morales Lechuga's appointment, relations between the CNDH and the Federal Attorney General's Office seem to have improved. In July 1991, the CNDH was granted by decree the authority to carry out "visits and acts of monitoring and observation in each and every area" of the office. The new federal attorney general also has promised prompt replies to past and future CNDH recommendations, and has appeared publicly with CNDH President Carpizo to address human rights issues. In addition, during the summer and fall of 1991, the federal attorney general endeavored to restructure his office, with the publicly stated goal of ensuring greater observance of citizens' rights and institutional accountability.

It remains to be seen whether Morales Lechuga will significantly contribute to the improvement of human rights in Mexico. Already his tenure has been marred by allegations of serious abuse by police and prosecutors who report to him. In July 1991 Víctor Manuel Oropeza, a homeopathic physician and a columnist for *Diario de Juárez* and *Diario de Chihuahua*, was found stabbed to death in his medical office. He was well

¹²³ The motion was defeated by the ruling Institutional Revolutionary Party (PRI), but the publicity surrounding it embarrassed the Salinas government.

¹²⁴ To date, there have been no arrests for the bugging.

¹²⁵ For a description of the melee between rival drug bands and the ensuing standoff between police and Chávez's men, see Americas Watch, *Unceasing Abuses*, pp. 18-21. In relieving Alvarez del Castillo of his law enforcement duties, the Salinas government failed to take the one step that would have signaled to those engaged in human rights abuses that such conduct will not be tolerated: Alvarez del Castillo was not investigated, charged, or tried for human rights abuses committed by agents under his command. Instead, he was awarded a position of trust as head of Mexico's rural development bank.

known for his outspoken opposition to and willingness to publicize electoral fraud, police abuse and other violations of civil and political rights. According to his wife, Oropeza and his family previously had received death threats.

Prosecutors handpicked by Morales Lechuga took charge of the Oropeza murder investigation. Although members of the respected Human Rights Commission of Juárez, Chihuahua (COSYDDHAC) were invited to observe the official interrogation of suspects, allegations abounded of torture and due process violations. Suspects were picked up for questioning without warrants and, according to COSYDDHAC, appeared at official interrogation sessions covered with bruises. One suspect told an Americas Watch investigator that he had been tortured into making a statement that he had murdered Dr. Oropeza after a homosexual liaison. When other evidence refuted this, he said police offered him a five hundred dollar bribe to point a finger at someone else. On July 12, two suspects in their early twenties were arrested. They told Americas Watch that they, too, had been tortured into confessing to the crime.

Maria Teresa Jardí Alonso, Attorney General Morales Lechuga's human rights staff officer, traveled to Chihuahua in July to investigate allegations that suspects had been tortured. Upon her return to Mexico City, she told the press, "what we saw again was the manufacture of guilty persons through the use of torture." On August 22, Jardí Alonso resigned from the attorney general's office.

In February 1991, Mexico adopted legal reforms that cover a range of topics, including the right of indigenous persons who do not understand Spanish to have an interpreter in criminal proceedings, a liberalization of the circumstances under which stays of proceedings may be requested; and a restriction of the circumstances under which confessions are admissible as evidence in criminal proceedings. In September, the CNDH proposed additional reforms. While these reforms are welcome, they have been introduced into a political climate in which the rule of law is often ignored. Only when coupled with strict enforcement of existing laws can such new legislation contribute to improving human rights conditions in Mexico.

The Right to Monitor

Americas Watch is especially concerned about threats to human rights activists in Mexico. The murder of Norma Corona Sapién in 1990, and her predecessor, Jesús Michel Jacobo, in 1987, both while they were serving as president of the Commission in Defense of Human Rights in Sinaloa, are frightening reminders to human rights activists of what might happen to them.¹²⁶ A month before her murder, Corona told the press that she had received death threats warning her to discontinue her investigation of Federal Judicial Police agents for the torture and murder of four persons in Sinaloa. In late September 1991, the Mexican government announced that a Federal Judicial Police commander had been arrested and charged with the Corona murder. There have been no arrests in the Jacobo murder.

On September 18, 1991, four state judicial police agents in civilian dress detained Father Joel Padrón González in his house in Simojovel, Chiapas. The officers did not identify themselves or present an arrest warrant. The judge assigned to the case refused to hear testimony on behalf of Father Padrón before ordering his pre-trial detention, and state authorities initially refused to grant CNDH investigators access to the case files. Father Padrón was charged formally with crimes relating to a Simojovel land conflict. On November 5, a federal judge ordered Padrón's release, citing the arresting police officers' failure to identify themselves or present an arrest warrant, and the trial judge's failure to file charges within the required three days.¹²⁷ Padrón was released the next day. The respected Chiapas-based Fray Bartolomé de las Casas Human Rights Center believes that Father Padrón was targeted in retaliation for Chiapas Bishop Samuel Ruiz's outspoken criticism of the deplorable state of human rights in the region.

In September 1990, the CNDH issued a recommendation in the case of Jesús Manuel Martínez Ruiz, who was tortured and murdered by

¹²⁶ See Americas Watch, *A Policy of Impunity*, pp. 12-13, and Americas Watch, *Unceasing Abuses*, pp. 10-11.

¹²⁷ Candelaria Rodriguez, "Jailed Priest Accused of Leading Peasant Revolt is Freed," Associated Press, November 7, 1991.

Tabasco State Judicial Police in September 1989.¹²⁸ The CNDH called on the governor of Tabasco to guarantee the physical integrity of members of Martínez Ruiz's family, who feared police reprisal for denouncing his torture and murder. Ana María Martínez Ruiz, Jesús Manuel's sister, complained of continued harassment by police well into 1991.

Journalists critical of human rights abuses and the government also have been threatened. In the most publicized case, Jorge Castañeda Gutman, a journalist, leading political pundit and board member of the non-governmental Mexican Commission for the Defense and Promotion of Human Rights, received indirect death threats in June 1990 through his secretary, Mariana Rodríguez Villegas, who twice was terrorized by gun-toting men on a Mexico City street.¹²⁹ At a conference hosted by the Center for Strategic and International Studies in Washington in September 1991, Federal Attorney General Morales Lechuga publicly attempted to discredit Rodríguez Villegas's account of the incidents.

U.S. Policy

The Bush Administration's human rights policy toward Mexico is wanting. Apparently determined not to allow human rights violations in Mexico to stand in the way of passage of the North American Free Trade Agreement (NAFTA) or U.S. efforts to fortify Mexico's anti-narcotics capabilities, the Administration in 1991 avoided all opportunities to criticize the Salinas government publicly for serious human rights abuses. In January, Assistant Secretary of State for Human Rights and Humanitarian Affairs Richard Shifter made his first official visit to Mexico. After his return, he reported to an Americas Watch representative that he was "very, very positive" about human rights reforms there. Yet during his brief visit, he never left Mexico City, nor did he hold substantive meetings with representatives of any Mexican non-governmental human rights organizations.

At a hearing in March before the House Subcommittee on Western Hemisphere Affairs, Assistant Secretary of State for Inter-American

¹²⁸ See Americas Watch, *A Policy of Impunity*, pp. 19-20.

¹²⁹ See Human Rights Watch, *Persecution of Human Rights Monitors*, pp. 72-3.

Affairs Bernard Aronson testified that "[U.S.-Mexican] cooperation in the war against drugs has never been better," but did not comment on the range of abuses committed by Mexican police and security agents charged with waging that "war." Rather, when asked about human rights in Mexico, Secretary Aronson commended President Salinas for the positive steps he had taken. In a similar hearing on April 18 before the Senate Subcommittee on Western Hemisphere Affairs, Secretary Aronson again did not broach the topic of human rights. The State Department informed Americas Watch that it did discuss human rights concerns with Attorney General Morales Lechuga during his visit to Washington in September.

The NAFTA negotiations are proceeding without any public discussion of human rights conditions on either side of the U.S.-Mexican border. Subjects such as human rights, labor rights and other social issues are explicitly excluded from the talks. Such exclusion flies in the face of a statement made by the State Department to Americas Watch: that initiatives like the free trade negotiations tend to encourage a fuller dialogue on human rights concerns.¹³⁰

In May, the U.S. Congress acceded to the Bush Administration's demand that the NAFTA negotiations be placed on a "fast track." By doing so Congress lost the opportunity to write human rights provisions into the agreement. The Administration has the opportunity to negotiate the inclusion of such standards, which have been advocated by many labor and human rights groups, but to date has shown no inclination to do so.

While Americas Watch takes no position on the NAFTA, we are disappointed that both governments are ignoring this extraordinary opportunity for bilateral cooperation in focussing attention on and ending human rights abuses on both sides of the border. The failure of the Bush Administration to insist publicly on human rights improvements in Mexico before opening its border to free trade is surprising since, according to the State Department, Americans frequently fall prey to police abuse in Mexico. The Mexican government's failure to raise the issue is also surprising, since it has sent numerous diplomatic protests regarding the abuse of Mexican nationals by agents of the U.S. Immigration and Naturalization Service and other government agencies

¹³⁰ Letter of October 3, 1991 to Americas Watch from Richard Howard, director of the Office of Mexican Affairs.

— involving more than seventy-five victims since 1985¹³¹ — without receiving satisfactory responses. Americas Watch calls on both governments to use the historic opportunity presented by the free trade negotiations to fulfill their obligations under the United Nations Charter to work together to promote respect for and observance of human rights in both countries.

In the anti-narcotics area, the United States continues to support Mexican anti-narcotics forces with training and equipment, despite ongoing abuses by these forces. On May 3, 1991, the United States and Mexico formally ratified a law enforcement accord, known as the Mutual Legal Assistance Treaty, designed to help law enforcement personnel in the two countries prosecute cross-border criminal cases including narcotics trafficking. For fiscal year 1991, the United States gave Mexico \$18.3 million in International Narcotics Control funds; the State Department has requested that \$26 million be appropriated for fiscal year 1992. These funds (to be provided in kind, primarily in the form of aviation maintenance and field support) are, in effect, direct aid to the Federal Judicial Police's abusive anti-narcotics division. The Bush Administration also provided \$400,000 in International Military Education and Training (IMET) assistance to the Mexican military in fiscal year 1991, and is seeking another \$430,000 for fiscal year 1992. These funds are intended primarily to train the Mexican military to operate more effectively in the anti-narcotics arena. The Administration's request for International Narcotics Control and IMET funds was presented with no mention of the unrelenting and extremely serious human rights abuses committed by the Federal Judicial Police and other police and security personnel charged with stopping narcotics trafficking.

This lack of concern about human rights is particularly troubling in light of the November 7 drug-related confrontation between Federal Judicial Police and the Mexican army, in which seven police agents were shot dead. Characterized as a "tragic error" by the Mexican government, *The Los Angeles Times* reported that autopsies revealed three of the victims had been shot at close range, including one police agent shot at point-

¹³¹ Edward Cody, "Mexico Protests Alleged Border Aggression by U.S Agents, *The Washington Post*, October 4, 1991.

blank range in the mouth.¹³² Compelling evidence indicates that, rather than a mistaken firefight, soldiers, intending to protect a plane laden with cocaine landing at a clandestine strip in Veracruz state, assaulted and overwhelmed police officers pursuing the plane.¹³³ Three persons aboard the plane escaped. Under orders from President Salinas, the Defense Ministry has enlisted the National Human Rights Commission to investigate the case.¹³⁴ Asked a series of questions about the incident on November 21, U.S. State Department spokeswoman Margaret Tutwiler lamented the police agents' deaths, but added that "[t]he Bush Administration has been very pleased with [Mexico's] cooperation" in the drug "war" in general.

Americas Watch believes that the United States should make crystal clear that all police and security forces engaged in preventing drug trafficking must adhere strictly to international human rights norms. To that end, the United States should stop funding any police or security agency — including Mexico's Federal Judicial Police — that does not unequivocally prevent and punish human rights abuses by its officers. The United States, in continuing to fund abusive forces, becomes party to the human rights violations committed by them.

The Work of Americas Watch

In January and February, an Americas Watch representative visited regions along the U.S.-Mexican border to investigate violence committed by U.S. border agents against foreign citizens attempting to migrate to the United States.

¹³² Marjorie Miller and Douglas Jehl, "Mexico Soldiers Accused in Drug Agent Killings," November 20, 1991.

¹³³ *Ibid.* The Federal Judicial Police was alerted to the plane by U.S. Drug Enforcement Administration agents monitoring the plane's flight by a U.S. Customs surveillance plane. Airborne Customs agents apparently videotaped the shootings.

¹³⁴ "Mexico insists killing of drug agents was accidental," United Press International, November 21, 1991.

In February, an Americas Watch delegation conducted a week-long fact-finding mission to Angostura, Sinaloa and Mexico City. It met with state and federal government officials, National Human Rights Commission President Jorge Carpizo, members of the non-governmental human rights community, opposition labor leaders and victims of human rights abuse.

In March, in conjunction with the Prison Project of Human Rights Watch, Americas Watch released *Prison Conditions in Mexico*. The report described massive overcrowding, deteriorating physical facilities, poorly trained and vastly underpaid guards and other prison officials, a system-wide culture of corruption and a lack of adequate funding.

In August, an Americas Watch representative visited Chihuahua to research the July murder of journalist Víctor Oropeza. Also in August, upon Americas Watch's suggestion, the Congressional Friends of Human Rights Monitors wrote to the Mexican government to express their concern over the delays and limited progress in the investigations into the May 1990 murder of Norma Corona.

In September, an Americas Watch representative met with Federal Attorney General Ignacio Morales Lechuga during the latter's trip to Washington. Americas Watch also published *Unceasing Abuses: Human Rights in Mexico One Year After the Introduction of Reform*, which updated the June 1990 report, *Human Rights in Mexico: A Policy of Impunity*.

On October 16, an Americas Watch representative testified on human rights in Mexico before the House Subcommittees on Western Hemisphere Affairs and Human Rights and International Organizations. Also in October, a representative traveled to Mexico to speak on human rights documentation at a conference of the newly formed National Democratic Lawyers Association, a nationwide group which is committed to representing victims of human rights abuses in legal proceedings.

Americas Watch and Yale University Press are preparing a comprehensive study of human rights conditions in Mexico. The book is to be part of the "Human Rights Watch Books" series published jointly by Yale and Human Rights Watch. In addition, Mexico's Planeta publishing house will soon release a Spanish-language anthology consisting of Americas Watch's three published reports on Mexico.

NICARAGUA

Human Rights Developments

In 1991, the task of national reconciliation in Nicaragua continued to be threatened by sporadic and sometimes violent unrest, the re-emergence of armed groups composed of both former *contras* and ex-Sandinista soldiers, and the inability of the judicial system to administer justice. The divisions wrought by the previous decade's bloody conflict continued to be manifest in a highly charged and politically polarized debate about private property, the state's role in the economy, and Sandinista dominance of the armed forces. The resort to violence by persons and groups of different political persuasions was perhaps the most troubling aspect of the still incomplete, and regularly tumultuous, democratic transition.

The Nicaraguan police and military did not themselves instigate political violence in urban areas. However, their failure to punish abuses — from either official or opposition sources — and their passivity in the face of major instances of violent unrest signaled the need for further progress in establishing the rule of law.

During the year, the government of President Violeta Chamorro reacted responsibly and prudently to tense situations in the countryside. The integration of former *contra* rebels in the so-called rural police expanded throughout the year in areas traditionally sympathetic to the *contras*, reducing the potential for political violence. Some former State Security officials known for human rights abuses who had entered the police force were removed from their posts in conflict areas. An office within the Ministry of Governance — the Civil Inspectorate — was created to investigate police abuses and became increasingly active throughout the year. The army was reduced in size to about twenty thousand and its role in society greatly diminished. Efforts to retrieve arms in the possession of the civilian population were renewed. Often, however, reforms were implemented only after long-standing problems had gotten out of hand. For example, the tensions that arose from the continued presence of Sandinista military and police in areas sympathetic to the *contras* and the United Nicaraguan Opposition (UNO) could have been anticipated.

The judicial system continued to suffer from poor funding, politicization, and an apparent lack of political will to investigate and prosecute violent crimes. As in 1990, the Chamorro government seemed intentionally to avoid pressing through the justice system cases involving violent crimes committed by persons of one political persuasion against another.¹³⁵

The government apparently continues to believe that jailing suspects involved in politically motivated crimes would elicit charges of political persecution. However, this failure to enforce the criminal laws has bred further polarization and distrust. Violence perpetrated for political motives — whether by UNO, *contra* or Sandinista partisans — should be, but rarely is, investigated and punished by the authorities. The state also has a particularly strong responsibility to prosecute crimes committed by its own agents.

A number of high-profile killings and many lesser-known murders were not resolved during the course of 1991. Foremost among the prominent cases was the February 17 assassination of Enrique Bermúdez, who had been the top *contra* commander during most of the war. His murder was a setback to the process of national reconciliation and did more to create a feeling of insecurity among demobilized rebels than any other single incident in post-war Nicaragua.

Less than a month after the murder, President Chamorro appointed a special commission composed of several lawyers and one former *contra* commander to monitor the government's investigation into the Bermúdez killing. After months of work, including exhuming the body months later for an autopsy in Miami, the commission issued a brief report in early November and disbanded. The report concluded that the one eyewitness named by the police had no credibility and that the forensic capabilities of the police were not sufficient to carry out a decent investigation.¹³⁶

¹³⁵ An October 30 report by the Nicaraguan Center for Human Rights (CENIDH), for example, found that judicial investigations were opened in only fifty-five of the 215 killings it reviewed, and that in only a small percentage of those was anyone detained and prosecuted. See CENIDH, *Investigación: El Derecho a la Vida e Impunidad*, October 30, 1991.

¹³⁶ For more information on this and other cases, see Americas Watch, *Filful Peace: Human Rights and Reconciliation in Nicaragua under the Chamorro Government*, July 1991.

In another case, several members of the army and police killed Francisco Luis Cano Chavarría, alias Commander "Chapulín," as they attempted to disarm him on April 12 near Wiwilí, Jinotega. "Chapulín" had been suspected of the murder of a former State Security agent. An Americas Watch investigation concluded that "Chapulín's" death, while not necessarily premeditated, was intentional and could have been avoided. The man filling the newly created post of civil inspector investigated the case and recommended that the police lieutenant in charge of the operation be transferred to another zone, that the army not engage in law-enforcement missions, and that special delegates from the Ministry of Governance (formerly Interior) be named in municipalities with deep political divisions. In theory, the naming of Ministry of Governance delegates would provide a civilian authority that could mediate conflicts and investigate abuses by Sandinista military personnel. Months after "Chapulín's" death, and after further violence in July in Wiwilí, the police lieutenant identified by the civil inspector was finally transferred. In late 1991, Ministry of Governance delegates were named in nine conflictive municipalities in the north. However, no one has been charged in "Chapulín's" death.

The October 1990 killing of sixteen-year-old Jean Paul Genie was revisited in 1991 by a special National Assembly commission. Genie was allegedly murdered by bodyguards of army General Humberto Ortega as Genie attempted to pass a caravan of four military escort vehicles on the highway between Managua and Masaya. At the request of the Nicaraguan Assembly, the Venezuelan Parliament sent a team of specialists to review the police investigation, which had identified no suspects. Although the Venezuelan team turned up no new evidence, it reiterated the charge made by Nicaragua's Permanent Commission on Human Rights (CPDH) and Genie's parents that the prime suspects were General Ortega's bodyguards. The case remains in the civilian court system.

Significant urban violence erupted in 1991 during labor disputes as well as when the National Assembly attempted in June to overturn controversial property laws enacted in the closing months of Sandinista rule. The Nicaraguan police intervened aggressively against Sandinista unions in several cases, but in others were accused of standing by passively during violence by Sandinista partisans.

In April, for example, the police brutally attacked striking workers affiliated with the pro-Sandinista National Workers' Front outside the Olof Palme conference center, injuring dozens of people. According to the Nicaraguan Center for Human Rights (CENIDH), at least sixteen

workers were beaten around the head, back and stomach with rubber truncheons and clubs, and kicked while being forced into police vehicles.

In mid-June, political tensions erupted when the National Conservative Party introduced a bill in the National Assembly to repeal two laws passed in the waning months of Sandinista rule. Laws 85 and 86 had privatized some state property (enriching top Sandinista leaders in a so-called *piñata*) and legalized the status of rural and urban plots handed out over the years to thousands of poor Nicaraguans. The Assembly action led to armed takeovers of radio stations and municipal buildings by Sandinista organizations and bombings of the homes and offices of UNO politicians. For the most part, the police responded with inaction, which was widely interpreted as evidence of their pro-Sandinista bias.

UNO deputies and politicians decried the various incidents as acts of terrorism by the Sandinista Front (FSLN), and National Assembly President Alfredo César blamed the Sandinistas for death threats that he said some UNO deputies had received. On June 21, even the pro-Sandinista newspaper *Barricada* condemned the bombings as terrorism and called for negotiations to end the conflict. All of the takeovers were eventually resolved through negotiations and without further violence, although former President Daniel Ortega held out the prospect of renewed disorder. "We have used civic rebellion," he told supporters. "But the Sandinista Front cannot renounce armed rebellion if the National Assembly tries to take away the rights the people have won."¹³⁷ The UNO majority in the Assembly eventually passed a property bill on August 23, but it was vetoed by President Chamorro.

Violence erupted again in Managua on November 9 following the bombing of the tomb of Carlos Fonseca, a Sandinista hero and one of the founders of the FSLN. Looting ensued after Sandinista demonstrators set fire to the offices of Managua Mayor Arnoldo Alemán, a chief conservative leader, whom they blamed for the bombing. Other Sandinistas shot at former *contras* outside the headquarters of their civic association. Conservative radio stations were assaulted by armed Sandinista partisans, and *contra*-leader Alfredo César's Social Democratic Party headquarters were damaged. The police, as they had during the disturbances in June, remained passive.

¹³⁷ Richard Jacobsen, Reuters, "Sandinistas Offer to Return Land -- With a Catch," *The Miami Herald*, July 1, 1991.

Following the worst of the violence, Daniel Ortega called for calm at a public rally and accused right-wing politicians of trying to bring back "*somocismo*," a reference to the rule of the former Nicaraguan dictator.¹³⁸ Meanwhile, conservatives accused the FSLN of planting the bomb at Fonseca's grave to provoke chaos.

Following these incidents, the government announced an agreement on November 12 to begin a tripartite "national dialogue" between the government, anti-Chamorro UNO politicians, and the FSLN. Governance Minister Carlos Hurtado also announced the formation of a commission led by Vice-Minister of Governance José Pallais to investigate credible charges that some police officers stood by and did nothing to stop the violence.

Few of the major violent land disputes of 1990 were repeated in 1991. Previously, armed and unarmed demobilized rebels, former Sandinista soldiers and traditionally landless peasants had invaded dozens of cooperatives and other lands out of sheer economic desperation, often sparking violent confrontations. According to the National Federation of Cooperatives, by late 1991 only some forty coops remained in the hands of former *contras* who had forcibly taken them over, as compared with two hundred at the beginning of the year.

The most violent incident in 1991 occurred on February 28, when a group of some two hundred unarmed persons, among them peasants, demobilized *contras*, and members of the Communist Party's Confederation of Trade Union Action and Unity, marched on a state farm in Corinto Finca, Jinotega, where they were fired upon by armed workers, leaving five dead and eleven wounded.¹³⁹ The incident was one of the few in which a judicial investigation was carried out. Several of the workers from Corinto Finca were incarcerated, although no further action appears to have been taken.

Despite the decline in the number of land disputes, violence in the countryside continued at high levels during 1991, producing a situation of insecurity for persons across the political spectrum. There were numerous violent confrontations between demobilized *contras* and

¹³⁸ Conservatives had recently attempted to challenge the legal status of the FSLN, to create a municipal police force independent of the Sandinistas, and to strip Ortega of his parliamentary immunity.

¹³⁹ Americas Watch, *Fiful Peace*, July 1991, p. 36.

Sandinista civilians, and a smaller number of incidents involving the police or military.¹⁴⁰ In addition, small groups of demobilized *contras* -- disgruntled with the failure of the Chamorro government to deliver on promises of land, and often claiming persecution by the police and Sandinista civilians -- began taking up arms again in early 1991. These groups have been popularly dubbed the "*recontras*." By mid-year, attacks by these groups on both military and civilian targets were a weekly, if not daily, occurrence. As a result of the renewed military activity by former rebels, groups of Sandinistas (the so-called *recompas*¹⁴¹) also began to form armed bands by mid-year. It is thought that the *recompas* consist of demobilized members of the Sandinista army.

The demobilized *contras* often cite the state's inability or unwillingness to secure their personal security as the principal reason for the emergence of the *recontra* movement. Indeed, two of the *recontra* groups named themselves after Enrique Bermúdez and "Chapulín," noted above, whom they believe to have been murdered by the Sandinistas.

The group responsible for verifying the security of the demobilized *contras*, the Organization of American States (OAS) International Commission of Support and Verification (CIAV), has played a valuable, though little understood, role in defusing tensions in the countryside.¹⁴² Through its daily contact with the demobilized *contras*, it has compiled reports of seventy-seven killings of former rebels between July 1, 1990 and August 31, 1991, as well as hundreds of other cases of threats, illegal detentions, and physical attacks. Responsibility for seventeen of the reported deaths was attributed to the police or military, and forty-two to Sandinista partisans. The Nicaraguan Association For Human Rights (ANPDH), set up to monitor human rights abuses within the *contra* movement, also documented numerous other instances of

¹⁴⁰ These incidents were reported by the International Commission of Support and Verification (CIAV) without elaboration as to the circumstances and without attributing culpability. In the latter part of the year, the CIAV only reported statistics on the numbers killed.

¹⁴¹ Sandinistas, and more specifically Sandinista soldiers, referred to each other informally as *compas* during the war.

¹⁴² In late 1991, discussions were underway that would expand the CIAV's mandate to include other sectors threatened by violence.

threats, physical injury, robbery and detentions. During approximately the same period, CENIDH reported some fifty-six killings of members or sympathizers of the FSLN.

The exact motives for and circumstances surrounding the killings of former rebels varied. In some of the cases attributed to state authorities or FSLN militants, the victims as well as the assailants were armed. Moreover, not all of the deaths had political overtones. But the substantial impunity for abuses by both government forces and civilians of all political persuasions has fostered a situation conducive to violence and the personal settling of scores.

In this context, the *recontras*, and later the *recompas*, began to emerge in early 1991, primarily in northern Nicaragua. The *recontras* have operated mostly in Region VI (Jinotega and Matagalpa), the area where the *contra* war was most intense and where today there is the largest concentration of former rebels without land and the most serious reported security problems for former *contras*. *Recontras* also have been active in other former conflictive zones in Regions I and V. Estimates of their number, which range from several hundred to several thousand, are complicated by the many armed actions carried out by former *contras* and ex-Sandinista soldiers that are criminal rather than political in nature. Although the demands of the *recontras* have not always been clear or well-articulated, and have varied depending on the particular *recontra* unit, their overriding goal seems to be to reduce the influence and power of the Sandinistas in the military and the police.

By mid-year, *recontra* attacks against civilian and military targets had become a common occurrence, especially in the north. *Recontra* units under the command of José Angel Román, known as "Indomable," appear to be responsible for serious abuses and attacks against civilians, while additional troops appear to be loyal to Francisco Valdivia ("Dimas") and his brother Encarnación ("Tigrillo"). Some of the more notorious cases of abuse attributed to the *recontras* include the June 6 assassination of the police chief of San Rafael del Norte and his secretary as they were traveling by car en route to San Rafael, and the August 31 attack in Boaco on the "Carlos Fonseca" cooperative, in which three children were killed and others wounded.

In August, the Nicaraguan press reported the emergence of various *recompa* groups set up to counter the attacks of the *recontras*. The August 22 detonation of a mine on a road near Pita del Carmen, Matagalpa -- where one group of *recontras* was known to congregate -- resulted in the death of some six *recontras* and eight civilians traveling in a truck with

them.

In general, the government has responded politically rather than militarily to the *recontra* threat, trying to minimize its importance and to avoid armed confrontations. Negotiations between government officials and *recontra* leaders to end the violence began in June. By November, the government and the major *recontra* leaders (with the exception of "Indomable") had agreed to increase the number of former *contras* in the rural police, withdraw the military from several northern areas, and include *contras* and *recontras* in regional security commissions and disarmament brigades.

Disarmament brigades, which are made up of equal numbers of military or police agents and former *contras* or *recontras*, began functioning in November in Matagalpa. Their task is to disarm the huge number of civilians (estimates range from 50,000 to 100,000) who possess arms. Although the brigade is expected to meet with only limited success, it represents an important first step in the process of disarming the civilian population.

The Right to Monitor

Freedom to monitor the human rights situation in Nicaragua is for the most part unrestricted, although late in the year the CIAV denounced a number of ways, described below, in which Sandinista authorities or sympathizers had interfered with the work of the organization. Several human rights organizations of different political and ideological tendencies continue to operate, for the most part without the direct or indirect pressures against monitors that one finds in other Central American countries (with the obvious exception of Costa Rica.) Americas Watch was told, however, of one incident in which a house of a collaborator of the CPDH was shot at in Boaco in late September but no one was injured.

In addition to domestic groups, the OAS International Commission for Verification and Support operates throughout Nicaragua, in part verifying the security of the demobilized *contras*. Although some of the work of the CIAV involves monitoring, it also engages in direct assistance to the demobilized *contras*. In early December, CIAV director Santiago Murray publicly denounced a series of threats and physical attacks on CIAV personnel and property carried out by Sandinista military and security agents as well as by unknown perpetrators; the reprehensible

incident that sparked Murray's public condemnation was the kidnapping and murder by *recompas* of a wounded *recontra* being transported in a CIAV vehicle. In a similar episode, Claudia Vargas de Pérez, a CIAV official, was stopped by the police on October 1 and physically abused while transporting three wounded *recontras*. Several of the police were later reprimanded.

Through the coordination of the civil inspector, domestic human rights groups also have a more regular means of communicating with the government. Several groups have made extensive visits to state prisons to examine conditions. On one occasion, a visiting delegation was allowed to film conditions and interviews with prisoners.

U.S. Policy

Having occupied center stage in the U.S. foreign policy battles of the 1980s, Nicaragua virtually disappeared from policy discussion following the 1990 inauguration of President Violeta Chamorro.¹⁴³ Most State Department public comment was measured, and emphasized U.S. support for Chamorro's efforts at national reconciliation; for example, in response to a question on the *recontras* on April 9, spokesman Richard Boucher blandly stated that all sectors of Nicaraguan society should refrain from violence and contribute to national reconciliation.

The failure throughout the year to condemn the *recontras'* return to arms as well as various incidents of murder or kidnapping attributed to them contrasted sharply with the pointed criticism of Sandinista leaders in June for provoking violent takeovers of radio stations and municipal buildings and threats to non-Sandinista legislators. Boucher stated on June 20 that "Sandinista leaders have the responsibility to disavow these violent actions, take action to end them, and conduct their debate through constitutional means." In early December, Secretary of State James Baker sent an unpublicized letter to Nicaraguan Foreign Minister Enrique Dreyfus expressing concern over the violence in November. While U.S. criticisms of Sandinista behavior have been well-placed, they have been one-sided, given other sources of political violence in

¹⁴³ Nonetheless, Nicaragua received the largest economic aid package of any country in Central America during fiscal years 1990 and 1991, more than \$555 million.

Nicaragua, especially the *recontras*.

The United States pressed publicly for a thorough investigation of the killing of *contra* commander Enrique Bermúdez, and both Assistant Secretary of State for Inter-American Affairs Bernard Aronson and Assistant Secretary of State for Human Rights and Humanitarian Affairs Richard Schifter met with Bermúdez's widow to demonstrate U.S. concern for the murder. In the months immediately following the assassination, however, several U.S. actions were decidedly unhelpful to the pursuit of justice in the case. The Federal Bureau of Investigation delayed until December providing information relevant to the investigation that was officially requested by the Nicaraguan Ministry of Governance in April. Similarly, Administration officials said in February that they had "heavy circumstantial evidence" linking the murder to the army high command; but after leveling the charge, the Administration refused to describe the nature of its information or to pass it along to the Nicaraguan government.¹⁴⁴

In one instance, the United States appeared to be interfering with a valid human rights initiative of the Chamorro government. In September, Minister of the Presidency Antonio Lacayo told reporters that the United States was reluctant to finance a civilian disarmament program that involved buying back and destroying weapons; a U.S. official told Americas Watch that this was because the Sandinistas, who control more weapons, would unduly benefit. This logic obscures the fact that disarmament of the civilian population is a key demand of human rights groups and groups opposed to the Sandinistas, including the *recontras*, and would no doubt diminish political violence. Similar buy-back programs are taking place in major cities around the United States, without regard to who receives payment for the weapons purchased.

A case in the International Court of Justice (the World Court) that had stood as a major irritant in U.S.-Nicaraguan relations was also resolved in 1991. In 1984, Nicaragua sued the United States in the World Court for the mining of Nicaraguan harbors and violations of international humanitarian law. Two days before filing the case, the United States announced its refusal to accept Court jurisdiction for disputes involving Central America; in 1985, the United States announced that it was ending its policy of automatic compliance with Court decisions.

Nonetheless, the Court ruled on June 27, 1986 that U.S. sponsorship

¹⁴⁴ See Americas Watch, *Fitful Peace*, July 1991, pp. 40 and 53.

of the *contra* war and the laying of mines in Nicaraguan harbors were violations of international law, and that the United States had "encouraged the commission by [the *contras*] of acts contrary to general principles of humanitarian law."¹⁴⁵ The Court ordered the United States to pay reparations, but never specified an amount. The decision represented a key political victory for the Sandinista government, while the U.S. withdrawal demonstrated the selectivity with which the United States upheld international law.

On June 5, 1991, Nicaragua's National Assembly approved a law repealing another law that had required Nicaragua to seek compensation. In mid-September, the Chamorro government announced that it had withdrawn the suit from the Court. While the dropping of the case will no doubt smooth relations between the United States and Nicaragua, Americas Watch deplores the short shrift given to international law, particularly as the Bush Administration purports to build a "new world order" on international legal principles.

The Work of Americas Watch

Americas Watch conducted extensive field research in Nicaragua during the months of March, April, May and June 1991, which led to the release of a July report, *Fitful Peace: Human Rights and Reconciliation in Nicaragua under the Chamorro Government*. The report was a comprehensive study of the human rights situation since President Chamorro took office, reviewing all the major episodes of political violence, agrarian conflict, and targeted assassinations, as well as issues of clandestine cemeteries, accountability for past abuses, the *recontras* and the judicial system. The report was widely covered in the Nicaraguan press and, to a lesser degree, the U.S. press. Additional follow-up visits to Nicaragua were conducted in July and November.

¹⁴⁵ For example, the CIA produced a manual on "Psychological Operations in Guerrilla Warfare" which in several places instructed the *contras* to assassinate civilians taking no active part in hostilities. See Americas Watch, *Violations of the Laws of War by Both Sides in Nicaragua 1981-1985*, March 1985, pp. 93-97; and Americas Watch, *Human Rights in Nicaragua 1986*, February 1987, pp. 167-170.

PANAMA

Human Rights Developments

Two years after the December 1989 invasion by U.S. forces, serious deficiencies in the Panamanian judicial and penal systems remain largely unimproved. Extremely lengthy pretrial detention — in some cases lasting up to five years — continues to be the rule for defendants accused of crime. According to the Panamanian government's own figures, at least eighty percent of the more than 3,500 prisoners in jail have not been convicted or even, in many cases, formally charged. Although this represents a decline from the ninety percent figure reported a year ago, the number of pretrial detainees in custody for more than two years has actually increased slightly since the end of 1990. A government plan to identify and process the cases of those held longest in prison without trial has had no discernible impact.

Americas Watch is concerned not only by the inordinate length of pretrial detention, but also by the conditions in which inmates are held. Every one of Panama's five principal jails is seriously overcrowded, and in some cases the prison population is more than triple the facility's maximum capacity. These conditions breed intense, and sometimes fatal, prisoner-against-prisoner violence. For example, in the Modelo jail in Panama City alone, there were six murders during a four-month period in late 1990 and early 1991. Partly in response to these conditions, prisoners at Modelo staged an uprising in September, which authorities were able to suppress only after several prisoners were wounded. Although most prison violence in Panama is instigated by prisoners themselves, credible reports indicate that inmates at the Coiba Island facility were also severely and systematically abused by their jailers in 1991. Two inmates at Coiba who died in July are believed to have been victims of torture by prison officials, and more than 170 fellow inmates have complained of serious physical and psychological abuse. Government sources have acknowledged that abuses at the Coiba facility were confirmed in reports by lower-ranking prison officials that were later suppressed by the Ministry of Government and Justice.

Panamanian officials do not deny the seriousness of the problems posed by prolonged pretrial detention, a crushing backlog in the courts, and substandard prison conditions. Over the past two years, however,

they have had virtually no success in addressing these deficiencies. Fifteen new public defenders were appointed in 1991, but the total number now, thirty-one, is still five fewer than required by Panamanian law and far fewer than needed to serve the thousands of accused who lack the resources to retain private counsel. Four new courts were added in early 1991, but even though the pace of judicial activity is reported to have increased substantially, there were still more than 25,000 criminal cases pending in the courts at mid-year, many of which had been referred for prosecution over two years earlier. No new prison facilities have been built or even begun since the invasion.

The Panamanian government's poor performance in improving the administration of justice is frequently explained by the lack of funds available in a country with pressing social-welfare needs and continuing economic dislocation caused by the U.S. boycott prior to the invasion. However, mismanagement, political cronyism, corruption and a lack of institutional will also have contributed significantly to the failure of judicial and penal reform in Panama. Throughout the first half of 1991, for example, the attorney general's office was beset by waves of firings and dismissals having little to do with issues of competence. The attorney general himself, Rogelio Cruz, at times appeared to devote more energy to attacking his critics in the press, and to publicizing dubious charges of attempted coups, than to the day-to-day responsibilities of his office. Moreover, in at least two cases, lower-court judges who issued politically unpopular orders to release certain defendants on bail were rebuked by the Executive branch and fired by their supervisory judges. In addition, in April 1991, disputes within the Executive over patronage and other issues led to the ouster of the Christian Democratic Party from the ruling coalition; as a result, many officials responsible for the administration of justice, including Vice President and former Minister of Government and Justice Ricardo Arias Calderon, left their posts, and the reforms they had advocated have not been pursued.

These systemic shortcomings are compounded by the Panamanian government's continued unwillingness to address the most serious human rights violations committed by members of the former Noriega regime. To date, no one responsible for the more prominent abuses of the former government — including the murder in 1971 of activist priest Hector Gallego, and the torture and murder of Hugo Spadafora in 1985 — has been brought to trial. Indeed, the government is able to cite only one successful prosecution thus far of a Noriega-era official — a military captain sentenced to forty-two months for extortion. Fewer than thirty

other former officials currently face charges for past abuses, a number which many believe does not come close to representing the level of past abuse.

Americas Watch remains concerned by the composition, leadership and training of the Panamanian Public Force (PPF), which replaced Noriega's Panamanian Defense Force (PDF). Although the most senior officials of the PDF were removed following the invasion, the vast majority of PDF soldiers, numbering more than ten thousand, were retained as members of the PPF. Only approximately half of these have undergone U.S.-sponsored training programs designed to improve the professionalism of Panama's principal law-enforcement agency and enhance its respect for human rights. So far, politically motivated abuses by the PPF appear to be rare, at least by comparison to the record compiled by the PDF, but corruption and lawlessness are continuing: among other incidents, PPF members were implicated in a bank robbery in Panama City and the theft and destruction of property in Chiriqui province, and there are persistent reports that the PPF provides assistance to drug smugglers in several sections of the country. Frequent turnovers at the top of the agency have hampered the government's ability to identify and control such misconduct. Since the invasion, there have been six PPF directors. The most recent resignation, in October, was forced because of the director's open participation in party politics, in violation of constitutional prohibitions. The resignation before that, in April, resulted from the Christian Democratic Party's ouster from the coalition government of President Guillermo Endara.

Apart from the PPF, President Endara has created an Institutional Protection Service (IPS) of between six and nine hundred members whose activities are of concern to many Panamanians. Charged with protection of the office of the president, the IPS is believed to carry on the wiretapping program of Noriega's G-2 intelligence service. In addition, the structure of the IPS — its members are heavily armed, do not wear uniforms or badges, and have no clearly defined chain of command — poses a constant risk of return to the paramilitary-style abuses of the Noriega era. These concerns are reinforced by widespread reports, never denied by President Endara, that both the IPS and the Public Security and National Defense Council are headed by Menalco Solis, a former Noriega minister and ally.

In upholding the freedoms of expression and association, the current government represents a substantial improvement over the prior regime. Public protests are not uncommon and, with a few notable exceptions,

have not been met with official violence. The range of political expression is far broader than it was under Noriega: anti-government viewpoints are heard daily on television and radio, and a number of newspapers that are harshly critical of the government publish regularly. Freedom from censorship is not absolute, however. Anti-Endara radio stations have been the subject of highly selective enforcement of technical operating requirements, and the government on occasion has blocked the import of foreign magazines containing detailed articles concerning corruption in various ministries.

The Right to Monitor

Americas Watch is unaware of any cases of government persecution of national or international human rights monitors or obstruction of their work in 1991. This reflects the general increase in freedom of expression and freedom of association that has been the most positive contribution of the Endara government to the human rights climate.

U.S. Policy

Like most Panamanian officials, U.S. representatives are quick to acknowledge the serious shortcomings that plague the judicial and penal systems in Panama. Through an "Improved Administration of Justice" project funded by the U.S. Agency for International Development (USAID), the United States is committed to help improve the operations of the judiciary and prosecutor's office. The means employed include professional training, the development of nonpolitical career tracks, modern case-management techniques, and material assistance such as computers and additional courtrooms. However, despite its laudable objectives, the modest program — a total of twelve million dollars to fund the program's five-year expected duration — has not, so far at least, materially affected the Panamanian legal system. Nor has the United States publicly used its leverage to encourage prosecution of the offenses committed under the Noriega regime.

The United States continues to refuse to pay reparations to the families of civilians killed during the fighting — even those killed because of the U.S. failure to give effective advance warning to the civilian population of its attack on a heavily populated zone, as required by the

laws of war. Although the United States has provided some money for housing, the funds fall far short of the amount necessary to rehouse all the families whose homes were destroyed in December 1989.

The United States has declined to pursue further certain troubling issues raised by the casualties of the invasion. Americas Watch has concluded, as have other monitoring groups, that the total number of Panamanians killed is not likely to have exceeded 350. But the circumstances under which the dead were killed remains shrouded in mystery, mainly because no contemporaneous autopsy or other investigation was conducted in the majority of cases. Nor, in many cases, were the dead buried in individual, clearly marked graves, as required by the laws of war. The later U.S. efforts on this issue appear to have been designed more for public relations purposes than to obtain an honest accounting of the conduct of U.S. forces.

The Work of Americas Watch

An Americas Watch representative visited Panama between February 21 and 26 to investigate the administration of justice in the country. The representative met with government officials, local human rights and prison monitors, attorneys and criminal defendants. In addition, the representative conducted follow-up inquiries concerning the issue of invasion casualties. In April, Americas Watch published a newsletter summarizing the conclusions of this mission, "Human Rights in Post-Invasion Panama: Justice Delayed is Justice Denied." The Americas Watch mission was covered widely by the Panamanian media.

On July 17, an Americas Watch representative testified about human rights conditions before the House Subcommittee on Western Hemisphere Affairs. The testimony later was relied upon by the subcommittee in questioning representatives of the Administration about human rights in Panama and the conduct of U.S. forces during the invasion.

PARAGUAY

Human Rights Developments

Elections in Paraguay in 1991 marked an important step toward the consolidation of democracy. Three months following the 1989 overthrow of longtime dictator General Alfredo Stroessner, coup leader General Andrés Rodríguez had held a quick election to legitimize his power. However, nationwide municipal elections held on May 26, 1991, were in some respects more significant. Not only were municipal officials elected for the first time in Paraguay's history — previously they were appointed by the president — but the triumph of a leftist candidate in Asunción represented the first real test of President Rodríguez's promise to permit political pluralism.

By honoring the election results, the Rodríguez government reinforced Paraguay's democratic direction as it encouraged broad sectors of civil society to participate in a national debate over the country's future constitution. On December 1, voters elected delegates to the convention charged with rewriting the constitution, a task which will take between 120 and 180 days.

Another unquestionable sign of change was the convening of the first public congress of the Paraguayan Communist Party in July. Espousing Marxist ideas remains a criminal offense under the current Constitution. Official tolerance of the Communists' legal activities was greeted by most sectors as an indication that President Rodríguez seriously intends to guarantee political rights.

However, there were also less auspicious developments in 1991. The problem of "land invasions," as they are known in Paraguay, exploded beginning in 1989 as landless peasants assumed that democracy would bring agrarian reform. The government has reacted with violence, including beatings, to expel thousands of peasants who have dared to move onto large estates (*latifundios*) that are eligible under Paraguayan law for expropriation. Evictions often occur without judicial warrant. Homes and crops are systematically destroyed. The peasants' tools and other belongings have been stolen by the police and soldiers. Community leaders have been arrested and held for days and sometimes weeks without proper judicial procedures. Hired gunmen have begun to operate with considerable impunity in rural areas, threatening and in a few cases

killing peasant leaders.

Rural gunmen in 1991 also intimidated and in one case killed reporters investigating contraband and drug dealings. On April 25, Journalists' Day in Paraguay, civilian gunmen shot and killed Santiago Leguizamón, a correspondent for the daily *Noticias* and an announcer for local radio station *Radio Mburucuyá*. The murder took place in the rural district of Amambay and came after the reporter had received a series of death threats warning him to stop investigating narcotics and contraband activities in the area. The journalists' union had sent a letter to the minister of interior requesting protection for Leguizamón before his death. Despite a May 1 march organized by the labor confederation to demand the detention and punishment of those responsible, the investigating judge has taken a largely passive approach to the case so far, and the investigation is stalled.

Other journalists have also been systematically harassed by gunmen. Héctor Guerrín, correspondent for *ABC Color* in Ciudad del Este, Alto Paraná, published a series of articles about a clandestine airstrip on the property of an important local politician of the ruling Colorado party. Some thirty gunmen who guard the property have physically threatened Guerrín with death, and harassed him in his home and office. Guerrín has given an investigating judge the names of the individuals involved, but no legal action has been taken to prevent further violence. A parliamentary delegation attempting to carry out an on-site investigation was also confronted by the armed guards and told at gunpoint that they must immediately leave.

The government has not adequately addressed the problems of lengthy pretrial delays and police beatings of prisoners. According to lawyers from the Tekojoja Foundation, of the 1,420 inmates in Tacumbú National Prison, only 142 have been convicted of a crime. In the rehabilitation institution for minors, La Emboscada, only three of the more than 140 inmates have been convicted. Many of these prisoners were forced to sign confessions under torture during the Stroessner era. The great majority of prisoners are eventually released once they serve the maximum jail term for the crime they are accused of committing. But those released under these circumstances have their identification cards stamped with a mark that, for the police and future employers, is tantamount to a previous conviction, even though the former prisoners never received a trial.

Numerous incidents of severe beating of men, women and adolescents in police precincts throughout the country were reported in

1991. Human rights lawyers report an increasing numbers of minors subjected to torture, and complain that prison authorities in the detention center for minors do not cooperate in facilitating medical exams to confirm injuries.

Reports were also received that the military continues to detain minors under the minimum draft age of seventeen and to induct them into the military. For example, sixteen-year-old Claudio Norberto Cuevas disappeared and was later found forcibly serving in a military barracks in Mariscal Estigarriba. On June 10, the newspaper *ABC Color* reported that the boy had been shot and killed.

The courts are currently investigating over a dozen cases of torture and assassination from the Stroessner era. While Paraguay is the only new democracy in the Southern Cone in which no amnesty law protects those responsible for committing abuses during past regimes, trials have generally not moved forward. Only one case, regarding the murder of Mario Schaerer Prono, has reached the trial stage. Four police officials are in detention awaiting the decision, although press reports indicate that at least two of these infamous torturers have been seen walking the streets of Asunción. Most observers believe they are given special privileges and are allowed to return to their homes on weekends.

The Right to Monitor

Several nongovernmental human rights groups now operate in Paraguay, generally without interference. However, three leading human rights lawyers involved in judicial prosecution of police responsible for past human rights violations reported receiving numerous telephoned and written death threats. The lawyers, Pedro Darío Portillo, Rodolfo Manuel Aseretto and Francisco de Vargas,¹⁴⁶ formally demanded an investigation in March. On March 10 unidentified gunmen opened fire on de Vargas's home.

¹⁴⁶ de Vargas is also a congressman for the opposition Authentic Radical Liberal Party.

U.S. Policy

Over the last several years, Americas Watch has applauded the stance taken by the U.S. Embassy in Asunción on human rights issues. Ambassador Timothy Towell did not hesitate to condemn human rights violations publicly, and most recently, in February 1991, denounced the threats received by journalist Hector Guerrín and a parliamentary delegation involved in an investigation of an illegal airstrip in Alto Parana.

The new U.S. ambassador, John Glassman, has continued this tradition, despite criticism in the Paraguayan press that he is paternalistic and interventionist. Ambassador Glassman has been active in the defense of press freedoms and, in September, intervened in two separate cases in which journalists had been charged with slander by private citizens closely linked to the government. In one of those cases, the ambassador's expression of outrage brought about the release from custody through a judicial pardon of radio journalist Víctor Benítez, who had been convicted on criminal charges of slander for an opinion he expressed about the owner of the newspaper *Hoy*, the probable future treasury minister.

The United States gave Paraguay \$175,000 in military-training assistance and \$400,000 in counternarcotics police aid during fiscal year 1991. The Bush Administration noted in its aid request that "the armed forces may also soon take a more active role in interdicting narcotics smugglers" — a prediction which appears to explain the additional \$500,000 in military grants requested by the Administration for fiscal year 1992.

In February 1991, trade benefits under the Generalized System of Preferences were reinstated. During the Stroessner era the United States had suspended benefits, as required by U.S. law, in response to the government's labor rights violations. Americas Watch opposed the reinstatement of benefits because of continuing labor rights violations and a failure to reform repressive labor laws.

The Work of Americas Watch

In February, Americas Watch published a newsletter, "New Outburst of Violence in Land Disputes," which documented abuses committed by soldiers and police during evictions. The report also described the failure of the government and the judiciary to address the problem of gunmen

hired by landowners to intimidate and in some cases murder peasant leaders.

An Americas Watch mission visited Asunción in February to present the report to government officials and meet with local reporters. Considerable press attention was given to the visit. In response to reporters' questions on his reaction to the report, President Rodríguez implicitly acknowledged abuses but tried to justify them. After charging that the report was "slightly exaggerated," he went on to say that "above all I would like to tell all those that believe we are committing abuses or not keeping our promise to respect human rights, that here the people don't respect the law either."¹⁴⁷

In April, America Watch sent a letter to President Rodríguez expressing concern over the continued use of violence during evictions. Another letter was sent to the Paraguayan Rural Association in response to an advertisement published in several newspapers complaining that the newsletter had not taken into account the human rights of the landowners. The letter explained Americas Watch's belief that the government should guarantee the rights of both parties to such conflicts, but that so far, at least, the judiciary, the police and the armed forces appear to have been at the disposition of only the landowners, while the rights of peasant squatters have been ignored.

PERU

Human Rights Developments

Peru now ranks as one of the most tormented countries of Latin America. Official statistics show that some 24,000 citizens — most of them civilians — have died in political violence since 1980. As many as 200,000 people have been displaced by the conflict, half of them children. Both official forces and the principal insurgents, *Sendero Luminoso* (Shining Path), murder and torture noncombatants and forcibly involve civilians

¹⁴⁷ *ABC Color*, March 1, 1991.

in the conflict, while the lesser rebel group, the Túpac Amaru Revolutionary Movement (MRTA), also carries out selective executions and bombings. For four straight years, from 1987 to 1990, Peru led the world in new disappearances, according to the specialized U.N. working group. Although there was some reduction in new disappearances during 1991, the practice continues at a high rate. Victims of political execution, disappearance, torture and harassment by official forces during 1991 included peasants, labor unionists, university students and journalists; the elderly and children were not exempted. *Sendero* victims cover the same gamut, with the addition of politicians and local officials as murder targets, and young boys as forced recruits.

In June 1990, Peruvians elected a new president, Alberto Fujimori, who promised a fresh approach to the counterinsurgency campaign and an end to human rights violations. During his first year, the counterinsurgency plan remained the same; as before, the government responded to rebel initiatives by expanding the territory under a state of emergency and, in emergency zones, establishing Political Military Commands to supersede civilian authority. Nearly half the national territory, and more than half the population of twenty-two million, remained or was placed under a state of emergency — that is, effective military governance — during 1991.

The new government's sole innovation, if it could be called that, was to put special emphasis on the creation of village civil-defense patrols, a tactic initiated under the government of Fernando Belaúnde (1980-1985) and continued off and on under that of Alan García (1985-90). The local civil patrols are in some places a genuinely volunteer force, created at the demand of villagers who are terrified of guerrilla violence. But in many cases the patrols were imposed by the official forces as a form of unpaid, unwelcome reserve duty — dangerous and, very often, aggressive rather than purely defensive. The patrols are frequently guilty of killing noncombatants, and for the first time in 1991 carried out disappearances as well. Because patrols include women and young boys, these normally civilian sectors of the rural population were brought into the conflict.

Predictably, human rights violations, continued during President Fujimori's first year. Indeed, the reduction in disappearances appeared to be balanced by an increase in the number of acknowledged dead, who once more were principally civilian noncombatants. Several massacres in rural areas drew attention to the army's brutality. In some egregious abuses the civil defense patrols participated. Officially tolerated paramilitary violence, including assassinations, persisted, although the

death squads appeared to be local phenomena rather than centrally coordinated. Torture took place in both military and police detention centers. On November 3, human rights violations took a new and grisly turn in Peru with the murder of sixteen persons in a barbecue eatery in downtown Lima, perpetrated by a paramilitary group.

These abuses did not appear to correspond to the intentions of the civilian government. However, President Fujimori made gestures of confidence in several officials linked with human rights abuses or responsible for covering them up. In December 1990, the president decreed that crimes committed by military personnel in the emergency zones must be defined as acts of duty and adjudicated in military courts — a guarantee that the crimes would remain unpunished. This decree was repealed by Congress in February 1991, but congressional reformers were unsuccessful in stopping the presidential promotion, also in December 1990, of two army generals linked to major massacres of the 1980s. On separate occasions during 1991, Fujimori's defense and interior ministers were involved in attempted cover-ups of human rights abuses which called their integrity into question, but neither official was asked to resign.

Both *Sendero* and the MRTA committed violations of the laws of war, specifically, common Article 3 of the 1949 Geneva Conventions, which applies to rebel groups and forbids murder or mistreatment of noncombatants. *Sendero* in particular used terror to control civilian communities. Through a network of clandestine and semi-clandestine front organizations, *Sendero* typically seeks to infiltrate authentic popular organizations and provoke divisions within them. If organizations prove resistant, *Sendero* executes their elected leadership. Similarly, when peasants do not support *Sendero* or object to its use of violence, the guerrillas exact bloody reprisals. Favorite targets are the civil patrols, which in *Sendero*'s view represent a village's collaboration with the army and navy, whether or not they are voluntary. *Sendero* has carried out indiscriminate mass murders in villages as punishment for the creation of a patrol. On November 3, *Sendero* killed thirty-seven persons in Santo Tomás de Pata, Angaraes, Ayacucho, ostensibly because they had formed a civil patrol.

During 1991, *Sendero* continued to be active in most of Peru, increasing its attacks in and around Lima and in the strategically important central states. It is not possible to speak of firm control of population or territory, but *Sendero*, has by now established itself in the central area of Peru — principally the department of Junín — as firmly as

it has been established in the highland regions of Ayacucho, Apurímac and Huancavelica since the early 1980s. It has also become a consistent presence, and important factor, in the Upper Huallaga River Valley, which comprises parts of two northeastern states and is the area where small growers produce most of Peru's coca.

The guerrilla groups do not engage directly in coca trafficking, but both receive "protection" money from drug traffickers in the areas where they operate — *Sendero* in the Upper Huallaga, and the MRTA further north, in the Central Huallaga — and so indirectly derive millions of dollars a year from the traffic in narcotics. The competition between the two groups, already intense, is likely to become more so given the financial stakes. *Sendero* was reported to be making advances on MRTA territory in the Central Huallaga toward the end of 1991.

The drug trade has stimulated corruption in a society where bribery of officials was already common. Crime and corruption linked to drug trafficking, added to the desperate poverty in which most Peruvians live and the spiral of political violence that grips the country, make Peru a place where solutions are both hard to develop and nearly impossible to administer effectively. In large areas of the country, political violence has driven out judges, mayors and other representatives of legitimate authority. In the Huallaga region, drug traffickers suborn local prosecutors, police and military officers. The central government, too, is riddled with corruption, of which recent accusations against former President García provide only one sensational example.

Nonetheless, there have been some admirable efforts to document human rights abuses and explore possible solutions to the problem of political violence. A special Senate commission on political violence gathers monthly statistics and makes yearly recommendations. Politically mixed commissions in both the Chamber of Deputies and the Senate pursue investigations of major human rights cases. During 1991, in an investigation of a 1990 massacre later covered up by President Fujimori's defense minister, the investigating senators recommended that the minister be tried as an accessory.

The Public Ministry, Peru's public defender, contains an office that investigates human rights complaints. Although the government's support for that office has been inadequate, the prosecutors in charge of human rights cases in the central office in Lima and in some regional offices as well have evidently attempted to do their job. On November 8, the prosecutor for Ayacucho, José Macera Tito, was murdered in the streets of Huamanga, the department capital, in front of his children, by two

young men presumed to belong to *Sendero*. Moreover, Peruvian human rights organizations have developed a credible national profile despite the difficulties of investigating complaints in conflict zones. These groups maintain conservative statistics, assist victims, analyze the trends in political violence and make policy recommendations.

In addition, as described below, President Fujimori during the latter half of 1991 instituted reforms demanded by the U.S. Congress which, if seriously implemented, may have a positive effect on human rights conditions.

The Right to Monitor

Each "side" finds fault with Peruvian human rights organizations, because the organizations criticize violations of basic rights by both sides. During 1991, human rights monitors were physically attacked by both *Sendero* and official forces. Porfirio Suni Quispe, an elected peasant leader in Puno department, a regional parliamentarian and president of the regional congress's human rights commission — a man with a long history of advocacy for human rights — was dragged from his home in May by two men in civilian clothes who were believed to be *Sendero* members and shot to death immediately. The following month, the *Sendero* newspaper, *El Diario*, contained an editorial indirectly threatening human rights activists by calling human rights a "bourgeois" idea created "to deny class struggle."

From the government's side, the victim was Augusto Zúñiga Paz, staff lawyer for the nongovernmental Human Rights Commission (COMISEDH). Zúñiga had been pursuing a disappearance case, and had told colleagues that he knew the identity of the perpetrator — a police officer and explosives expert. The case had been stalled by the Supreme Court but Zúñiga planned to reopen it. In March, Zúñiga received at COMISEDH a hand-delivered envelope which, when he opened it, blew off his left forearm. Zúñiga has left the country for medical treatment. The police investigation has been wholly ineffective, although the Senate has created a special commission to look into the attack.

Harassment has extended to judicial personnel. The victim was Moisés Ochoa Girón, the investigating judge in charge of the case of Hugo Bustíos, a journalist murdered in 1988 after passing through an army roadblock in Ayacucho. In June 1991, shortly after the judge had formally charged two army officers despite the army's failure to cooperate

with the investigation, his house was searched by an army patrol, supposedly on suspicion that he harbored subversives, but evidently as a form of intimidation. A secret army document dated in March, signed by General José Valdivia, head of the army for the region including Lima, was made public in July. In it, Valdivia was urged to initiate a military court proceeding so as to stave off the progress of Judge Ochoa's investigation. Later in the year, the military courts exonerated the two officers implicated, and challenged Ochoa's jurisdiction. The Superior Court of Ayacucho ruled in favor of the civilian court, but the defendants have appealed to the Supreme Court, and a final ruling is still pending.

Relations between the government and Peru's human rights organizations were mixed during 1991, becoming more tense toward the end of the year. After experiencing the disapproval of the U.S. Congress, the Fujimori government blamed human rights organizations for Peru's poor reputation. In speeches to military officers in September and October, he attacked what he called "pseudo-human rights organizations," falsely accusing them of not criticizing the deeds of the insurgencies. He repeated these wrong-headed and false accusations in statements to the press in Spain in October and again in an October 31 open letter to the Inter-American Commission on Human Rights of the Organization of American States (OAS), which was then visiting Peru. Such declarations are a sign of polarization and defensiveness. They also might be taken by some extremists to represent tolerance of reprisals against human rights monitors.

In November, during a visit to San Francisco, California, President Fujimori in public speeches renewed his criticism, this time naming Americas Watch and Amnesty International, and alleging that those organizations do not criticize *Sendero*. Americas Watch responded in letters to the Peruvian press, and articles in Peruvian magazines also demonstrated, that Americas Watch has criticized *Sendero* in all of the reports we have published since 1984. Despite this, Fujimori insisted on his accusation: in late November, at a military ceremony in the Las Palmas Air Force Base, he spent a long part of his speech delivering a blistering attack on both Americas Watch and Amnesty International, and ignoring the evidence that his charges of lack of impartiality are plainly false.

In a clear contradiction of that false charge, the Peruvian government issued an "official communique" on November 16, attacking Americas Watch for releasing an open letter to the head of *Sendero Luminoso* holding the insurgent leader responsible for a war crime

committed by his followers: the murder of Peruvian soldiers who had been placed *hors de combat* by their wounds. The official communique not only contradicted Fujimori's repeated charges that Americas Watch failed to address *Sendero* abuses, but it also flew in the face of clear international law that the application of the laws of war to a rebel group does not confer it any legal recognition.

On November 12 and 15, the president issued 126 "legislative decrees," promulgated in exercise of powers delegated to him by Congress, to address economic and political emergencies. Many of these decrees concern counterinsurgency problems. One of them establishes long prison terms for whoever reveals information that the army considers secret. This provision has been widely seen as a threat to both the press and human rights organizations; publication of a human rights violation by security forces, or of documents that refer to such a violation, could result in prosecution. Other decrees allow intelligence agents to seize property and conduct warrantless searches, whether or not a state of emergency is in effect in the area. Another decree subordinates civil defense patrols to the authority of the army, and allows draftees to serve their military duty in a civil patrol. An amendment to the law that regulates the state of emergency expands the powers of the "political-military chiefs" to control all aspects of government in their region, to the detriment of civilian authorities. Military and police forces are authorized to enter universities, schools and hospitals without seeking authorization from any civilian official. In case of disturbances, military forces are allowed to take over prisons; the last time they did this, in June 1986, under dubious authority, they murdered scores of inmates after they had surrendered.

Leaders of a wide spectrum of opposition parties have made public their disagreement with the content of the decrees, as well as with Fujimori's act of promulgating them without any form of consultation. In mid-December, the Peruvian Congress was working on repealing at least some of the most controversial provisions. Regardless of what parts of these decrees survive congressional action, they clearly show a disposition on Fujimori's part to provide the military with an even freer rein to commit abuses than it has enjoyed so far in counterinsurgency operations.

U.S. Policy

In May, President Fujimori signed a bilateral anti-narcotics agreement with the United States. The agreement, the subject of considerable controversy in Peru, had been under negotiation for over a year. It had been rejected by former President García and, once, by President Fujimori himself, for failing to include credible assistance for economic development. The new agreement was written vaguely; its particulars were to be spelled out in various appendices on military and economic aid. Not surprisingly, the military appendix was the first to appear. Signed in July, it projected some \$95 million in anti-narcotics assistance for fiscal year 1991, of which \$35 million was to be direct military aid.

The U.S. aid plan for Peru involved funding both the police and the military — principally the army — to fight narcotics and, inasmuch as the rebels have links to the drug traffickers, to fight the insurgency as well. Human rights conditions in the International Narcotics Control Act (INCA) of 1990 stipulate that to receive U.S. counter-narcotics aid a country's security forces must not practice torture, arbitrary detention, disappearance, or other flagrant human rights abuses; that appropriate international human rights organizations must have unimpeded access to places of detention; and that the government must exercise effective control over all counter-narcotics and counterinsurgency activities. Peru could not meet these conditions in 1991. Nonetheless, on July 30, just two days before Congress adjourned for its August recess, the Bush Administration issued a "determination" justifying aid to Peru, as required under INCA. The determination misrepresented human rights conditions and, in the process, contradicted the State Department's own annual human rights report on Peru, issued most recently in February 1991. The determination also falsely portrayed national human rights groups as supporting military aid, forcing those organizations to issue a public letter of clarification.

U.S. legislators, irritated at the Administration's attempt to rush through a controversial aid package without providing enough time for congressional oversight, and outraged by the spurious claims of human rights achievements, promptly placed a "hold" on the aid for six weeks. A group of ten senators, ranging from Senator Jesse Helms (the ranking Republican on the Senate Foreign Relations Committee) to Senator Chris Dodd (chair of the Senate's Western Hemisphere Subcommittee) wrote a letter to the State Department requesting that the human rights

determination be withdrawn. Leaders of the House Foreign Affairs Committee and both Senate and House Appropriations Committees also issued formal demands for a suspension of the aid package.

The determination was deserving of congressional scorn. The Administration ducked the legal requirement that *military and law enforcement* agencies not be engaging in gross abuses of human rights by insisting that *President Fujimori* was not engaging in such abuses. And the State Department claimed that the International Committee of the Red Cross (ICRC) had access to all police detention facilities, while in fact at the time of the determination the ICRC was not visiting all such facilities, and was barred altogether from secret military detention facilities, where the bulk of disappearances occur in Peru. The determination was flawed in other particulars, too: ignoring dozens of massacres and hundreds of disappearances at the hands of the armed forces, the State Department dismissed abuses as the isolated acts of rogue soldiers. To bolster a tenuous claim of civilian control over the military, the Department cited three human rights cases allegedly being prosecuted, but failed to mention that in each of the three cases the military had interfered significantly with the civilian authorities' efforts. Death squads were said to be "virtually eliminated," notwithstanding reports by Peruvian human rights monitors that abuses by paramilitary groups had actually increased.

One aspect of the determination that particularly outraged Congress was the claim that Peruvian human rights groups supported the Administration's contention that the government was not engaged in gross abuses of human rights.¹⁴⁸ Peruvian human rights organizations furiously disputed the notion, which was later retracted by Assistant Secretary of State for Human Rights and Humanitarian Affairs Richard Schifter. Nonetheless, Secretary Schifter continued to misrepresent the position of Peruvian human rights groups by insisting that they supported U.S. military assistance to Peru; this contention, too, the Peruvian human rights organizations formally disputed.

The issue was addressed at congressional hearings on September 12, where Assistant Secretary of State for Inter-American Affairs Bernard Aronson, Assistant Secretary of State for International Narcotics Matters

¹⁴⁸ The authorship of this particularly controversial feature of the State Department determination is a mystery. The U.S. ambassador to Peru, Anthony Quainton, revealed in a meeting with human rights groups that he was unaware of the contention, suggesting that it was added in Washington.

Melvyn Levitsky, and Secretary Schifter testified in support of the U.S. military aid package. The most disappointing aspect of the hearing was Secretary Schifter's strong defense of the Peruvian Government's human rights record and his minimization of human rights problems. He dismissed concerns about political killings in Peru by comparing the country favorably with Argentina and Chile in the 1970s and El Salvador in the early 1980s, and claimed (erroneously) that Peru suffered "only a few hundred" such killings in the past year. He insisted that disappearances in Peru had been reduced by two-thirds in the past year, based on cases brought before the United Nations Working Group on Disappearances. But as Schifter well knew but did not tell the committees, the U.N. figures reflect only those cases brought before the Geneva-based working group by Peruvian organizations and bear no resemblance to the reality in Peru, where disappearances ran at about the same rate as in previous years for the first half of 1991, and only declined in the second half because of strong international pressure.

The Human Rights Bureau became engaged in other aspects of the Peru determination battle with Congress. Secretary Schifter himself led a group of congressional aides to Peru, and the Human Rights Bureau developed a human rights training package to sanitize the military-aid proposal. By the end of 1991, however, these efforts had failed to convince congressional leaders that the Peruvian armed forces were deserving recipients of U.S. aid. Congress permitted the economic component of the aid to go forward in several tranches, but eliminated \$10 million in assistance which had been allocated to the Peruvian army. Some \$25 million was provided for training and equipment to the Peruvian navy, air force and police and for the army's civic action program.

Thanks to Congress's willingness to exercise the leverage of foreign assistance, the Peruvian authorities were persuaded to take the first steps toward instituting a series of reforms, including broader access to detainees by the ICRC, and more latitude for prosecutors investigating human rights cases. But a promised public registry of detainees is still far from functional, and little action has been seen to date on the nine test cases of human rights abuse upon which Congress has conditioned the

release of aid.¹⁴⁹

The Bush Administration's performance on Peru in 1991 was abysmal, but thanks to the language of U.S. human rights law and Congress's vigor in insisting upon compliance with it, the executive branch's eagerness to make an open-ended military commitment to Peru has been stalled. There is some sign that the Administration has been chastened by its grueling human rights policy battle with Congress, and State Department officials appeared to be working more cooperatively with Congress at year's end.

The Work of Americas Watch

Americas Watch was prominent in the effort to apply INCA human rights conditions to the proposed aid, and its recommendations for changes in Peruvian government policies were largely reflected in the

¹⁴⁹ By December, only one of those cases showed some progress: for the first time in recent years, the Peruvian army accepted responsibility for a massacre, and instituted charges in military courts against a lieutenant and five soldiers for the murder of fourteen peasants in Santa Barbara, Huancavelica. In November, a civilian prosecutor investigating the case and the president of the Santa Barbara community were arrested and held for four days under charges of obstructing justice by making accusations against the army.

The notorious case in which Lima police were videotaped as they arrested a medical student and two minors who were later found dead has been bogged down in a jurisdictional conflict between civilian and military courts. The Supreme Court ruled in favor of the civilian court, but then vacated its own judgment on a technicality and will rule again. In the meantime, only the three policemen involved in the actual arrest remain in prison, while higher officials initially arrested in connection with it have been released and are still on active duty. There has been no progress whatsoever in the other seven cases in which the U.S. Congress expressed interest. ICRC access has indeed been granted and ICRC delegates have visited many police and military detention centers. As for prosecutors, however, it appears that only in six or seven instances have they tried to use their newly gained access, without problems. In general, prosecutors are still acting under severe intimidation and prefer not even to try to visit military detention centers. The central registry of detainees has not been created, and State Department officials have reported that technical and bureaucratic complications will delay implementation of this condition for a long time to come.

demands of congressional leaders to the U.S. and Peruvian governments. A short report, *Into the Quagmire: Human Rights and U.S. Policy in Peru*, published in September, was widely circulated on Capitol Hill. It outlined the conditions prevailing in Peru during President Fujimori's first year in power — abuse by agents of the state and rebel forces, corruption and impunity — and offered a critique of the Bush Administration's arguments for aid. On September 12, Americas Watch also offered testimony on Peru before the House Subcommittees on Western Hemisphere Affairs and on Human Rights and International Organizations, and before the Task Force on International Narcotics Control.

Research and continuous monitoring of Peruvian conditions were done by Americas Watch in Washington and by the Americas Watch representative based in Santiago, Chile. Representatives of the organization visited Peru in May and July. Several campaigns were undertaken on behalf of victims of human rights violations, including numerous letters to President Fujimori.

During 1991, the OAS Inter-American Commission of Human Rights presented two cases against the government of Peru. Americas Watch is co-petitioner in each of these actions; the first regards the forced disappearance of inmates from the El Frontón prison during an uprising in 1986, and the second involves the massacre by soldiers of at least twenty-seven peasants in Cayara in May 1988 and the subsequent forced disappearance of nine witnesses to the massacre. On December 11, the Court ruled in the El Frontón case against preliminary objections raised by the Peruvian government; a trial on the merits is expected in 1992.

SURINAME

Human Rights Developments

Political life in Suriname, which gained independence from the Netherlands in 1975, continues under the shadow of the February 25, 1980 military coup, led by Sergeant Desire Bouterse, and the December 8-10, 1982 execution of fifteen opponents of the regime. In overthrowing

the civilian government, Bouterse, who became commander-in-chief of the army and assumed the rank of lieutenant colonel, suspended the Constitution and installed a succession of civilian figureheads as president. The executions, at military headquarters in the capital of Paramaribo, eliminated fifteen of the country's most prominent citizens.

As a result of the killings, the Netherlands suspended its substantial aid program, and the United States ended the \$1 million per year which it had been providing. The traumatic effect of the killings, which horrified Suriname's small, close-knit society, can be seen, in the view of many observers, in the later civilian government's lack of political will to exert control over the army.

In 1987, a new Constitution was approved by the National Assembly and a popular referendum. Articles 177 and 178, which give the army the function of "guaranteeing the conditions in which the Surinamese people can carry out and consolidate a peaceful transition to a democratic and socially just society," have been cited by the military to justify a continuing presence in politics.

Elections were held pursuant to the new Constitution in November 1987. Generally viewed as free and fair, the elections brought to power a civilian government dominated by a coalition of traditional ethnic-based parties, called the Front for Democracy and Development. The Front won forty of the fifty-one seats in the National Assembly, while the party affiliated with the military, the National Democratic Party (NDP), captured only three seats.

Despite this decisive mandate, the Front government was widely perceived as corrupt and reluctant to confront the military. The army, still under Colonel Bouterse, retained *de facto* control of the country. In December 1990, ostensibly because the civilian president did not react strongly enough to what Colonel Bouterse perceived to be insulting treatment by the Dutch, the army once again overthrew the civilian government and installed an interim government.

From 1987 to 1990, during the period of nominal civilian rule, the military engaged in numerous human rights abuses, both in the undeveloped interior and in Paramaribo, the capital. Violence in Paramaribo was directed particularly against members of the civilian police force who attempted to enforce the law against military personnel. These attacks included arson against police stations and drive-by shootings aimed at particular police officers. In August 1990, Police Inspector Herman Gooding was murdered under circumstances that strongly indicate military complicity, apparently in the course of

investigating military involvement in narcotics.

Violent abuses were most frequent in Suriname's interior. In various attempts to suppress an anti-Bouterse insurgency group called the Jungle Command, which formed following the 1980 coup, the army often launched harsh attacks against noncombatants. Military raids on villages in the interior resulted in hundreds of civilian deaths. Leaders of an Amerindian insurrection disappeared while in military custody in February 1990.

The situation in the interior worsened with the emergence of several armed groups that purport to be insurgents but almost certainly are proxies of the military. These groups engage in indiscriminate killing and robbery of civilians. In January 1990, the largest and most active of the groups, the Tucayana Amazonas, held a televised press conference in Colonel Bouterse's office and threatened by name Police Inspector Gooding before his murder.

Due to the fighting, thousands of Maroons (descendants of escaped slaves) and Amerindians have fled the interior to Paramaribo, other parts of Suriname, and neighboring French Guiana. Thousands of refugees are currently in camps in French Guiana.

In July 1989, the Jungle Command reached a peace agreement with the civilian government. However, in an indication of the civilian government's relative power, Colonel Bouterse effectively shelved the agreement by denouncing it as unconstitutional. Although former elements of the Jungle Command insurgency are now allied with the army, with the remaining active insurgents mostly in French Guiana, Colonel Bouterse has cited a supposed continuing insurgent threat to justify an ongoing military presence in the interior. The presence facilitates military involvement in drug trafficking which, considerable evidence shows, has grown rapidly in the last three years. Because military personnel are exempt from the jurisdiction of the civilian police or courts, army traffickers, as well as military abusers of human rights, have enjoyed total impunity.

On May 25, 1991, another election was held, amidst widespread popular doubts that elections would alter the balance of power. The Front, renamed the New Front, won thirty seats; the NDP, twelve seats; and a new opposition party, Democratic Alternative '91, nine seats. About sixty-four percent of the electorate went to the polls.

Again, the election was found to have been essentially free and fair by the international observers in attendance, with little overt intimidation of the opposition during the campaign. However, Americas Watch found

that the opposition politicians felt free to address the issue of civilian control of the military only tangentially, through the surrogate issue of whether to seek closer ties to the Netherlands.

Because the National Assembly was unable to elect a president by the requisite two-thirds majority, the decision went to the People's Assembly, made up of the National Assembly and the various New Front-dominated regional assemblies. On September 6, the People's Assembly elected by an eighty-percent majority Ronald Venetiaan, a member of the New Front and the minister of education in the civilian government toppled by the 1990 coup. Venetiaan is regarded as honest and more forceful than the previous civilian president.

Although newly elected members of the National Assembly belonging to Democratic Alternative have expressed the opinion that "nothing has changed," there has been some positive activity. Under Venetiaan, the government has announced its intention to cut the military's budget and to reorganize its functions, including transferring responsibility for immigration to the civilian police.

In September, President Venetiaan addressed the United Nations, pledging to amend the Constitution "within the shortest possible time." A number of constitutional amendments, including revisions of Articles 177 and 178, have been proposed to the State Council, an advisory body with the role of reviewing legislation, but the amendments have not yet reached the National Assembly.

In the same speech, President Venetiaan also pledged to fight drug trafficking. While few concrete steps have yet to be taken, Suriname in November signed a protocol of future cooperation with the Netherlands, which includes a provision for cooperation in fighting drug trafficking. The Dutch have agreed to restore some aid, including assistance to the judiciary and the police, with the rest of the aid conditioned on structural changes.

The result of these pledges has been a growing tension between the army and the civilian government. Since the government has not yet acted on its announced intentions, it is uncertain to what degree the army will resist further incursions on its prerogatives. A round of talks took place between the new government and the military leadership in October, at about the same time that the new constitutional amendments were proposed. In early November, after the talks, the military issued a curious statement essentially declaring that the military was an organ of the state charged with defense of the national sovereignty and implying that, as such, it reported only to the supreme commander — i.e., the

president — and would not take orders from others. This was regarded by some as a refusal to accept the authority of the defense minister. The statement was described by one observer as "superficially compliant" but essentially defiant.

Colonel Bouterse himself also has adopted a defiant posture. He allowed the press to film and report on a speech that he made to his troops, against the explicit instructions of the defense minister. He also threatened to sue *The Washington Post* over an article on drug trafficking in Suriname.

The human rights situation since the election is substantially unchanged. In the interior, armed groups allied with the military continue to engage in violence against civilians. There are reports of car hijackings, thievery, and kidnappings for ransom. Some diplomatic observers worry that the situation in the interior may soon escalate. In addition, a policeman was murdered in the town of Moengo in November; the lead suspect is a former member of the Jungle Command who is now apparently in the Netherlands. Various sources said that the policeman's murder is believed to be politically motivated, but the situation remains unclear.

There has been some activity on the international level regarding human rights in Suriname. In the fall of 1991, Amos Wako, the U.N. special rapporteur on summary or arbitrary executions, sent a letter to the Surinamese government asking for an explanation of the murder of Police Inspector Gooding. The government has not yet responded.

Two human rights cases involving Suriname are currently before the Organization of American States (OAS) Inter-American Court on Human Rights. In one of the cases, according to the lawyer representing Suriname before the Court, the Surinamese government has conceded responsibility to provide compensation to the families of victims of several military raids on the village of Pokigron, and will allow the Court to determine the amount owed. The Pokigron incidents, which took place in 1987 and 1989, resulted in numerous civilian deaths and the virtual destruction of the village.

The second case involves the November 1988 death of Gangaram Panday, a Surinamese whose body was found in a military police cell in the airport at Paramaribo upon his return to Suriname from the Netherlands. The military and the government assert that Panday committed suicide by hanging himself; others claim that he was murdered while in custody. The Surinamese government defended itself before the Court by arguing that the deceased was not a victim of homicide, that

domestic remedies were not exhausted, and that the OAS Inter-American Commission on Human Rights had not handled the case in accordance with the rules set forth in the American Convention on Human Rights. In early December, the Court rejected Suriname's preliminary objections and will consider the case on the merits sometime in 1992.

The Right to Monitor

An Americas Watch mission that visited Suriname shortly before the May election encountered no overt discouragement or intimidation. However, it did find a reluctance on the part of higher-ranking members of the military to speak to the mission.

The situation is more hostile for domestic human rights monitors. In December 1989, an attempt was made to assassinate Stanley Rensch, Suriname's most prominent human rights activist, under circumstance that strongly suggest army involvement. Rensch fortuitously escaped unharmed and there were no further attempts on his life, but he is often under military surveillance. Other members of Rensch's organization, *Moiwana '86*, have also encountered intimidation, including anonymous phone calls in which the caller imitates the noise of a gun shot. In 1989, two members of *Moiwana* were forced to leave the country and remain in the Netherlands. In a speech in November 1991, Colonel Bouterse made veiled threats against Ilse Labadie of the Organization for Justice and Peace, and a public prosecutor named Van Der San.¹⁵⁰

U.S. Policy

The Bush Administration strongly condemned the December 1990 coup and suspended aid to Suriname. It also pressed for the May 25 elections to be free and fair. For example, in testimony before the Senate Subcommittee on Western Hemisphere Affairs on April 18, Assistant Secretary of State for Inter-American Affairs Bernard Aronson said:

¹⁵⁰ Threatened at the same time was Dr. Jules Sedney, former general director of the Central Bank of Suriname.

We deplore the December military coup in Suriname that overthrew a democratically elected government. We urge the interim government in Paramaribo to keep its pledge to hold free and fair elections on May 25, to make them open to full international observation, and to respect the results.

Following the elections, the State Department expressed strong support for efforts by the civilian government to exert control over the military. Testifying before the House Subcommittee on Western Hemisphere Affairs on June 26, Deputy Assistant Secretary of State for Inter-American Affairs Sally Cowal warned:

We strongly endorse the right of the democratic forces to form a government and to rule unimpeded by the military. Bouterse's unbroken record of violence and intimidation against civilian authority, however, cause doubt that he will respect the popular will. I would note, however, that at the General Assembly of the OAS in Santiago earlier this month, all 34 nations unanimously adopted a resolution that calls for an automatic meeting of foreign ministers should any democratically elected government in the Hemisphere be overthrown. Anyone contemplating such an act in Suriname will face a united hemisphere committed to restoring democracy.... We intend, in conjunction with other interested governments, to offer every encouragement and support to democratic forces in Suriname.

A resumption of a certain amount of nonmilitary aid is reportedly under discussion as a means of strengthening the Venetiaan government. However, Secretaries Aronson and Cowal both indicated in their testimony that Suriname's role as a drug trafficking center remains a source of concern to the United States.

The Work of Americas Watch

Americas Watch sent a mission to Suriname in April 1991 to investigate pre-election conditions. A report of its findings was issued in mid-May, shortly before the election took place. The report received extensive press coverage in the Netherlands which, because of its past colonial relationship and potential aid commitment, is the most important external source of leverage on the Surinamese government.

ASIA WATCH OVERVIEW

Human Rights Developments

With few exceptions, Asia in 1991 was one long paroxysm of bad news on the human rights front. Civilians continue to bear the brunt of civil strife or outright war in Afghanistan; Cambodia; the states of Punjab, Kashmir and Assam in India; Aceh in Indonesia; East Timor; the Philippines; Sri Lanka; Tibet; and along Burma's borders with Bangladesh, China and Thailand. Anachronistic, one-party states continue to detain dissidents and nonviolent advocates of democratic change — thousands in the case of China and Burma, hundreds in Vietnam and Indonesia, and an unknown number in North Korea.¹ Pakistan, the Philippines and South Korea only recently the shining examples of restored of democracy in the region, were looking increasingly tarnished in 1991 in terms of respect for basic freedoms. Refugees continued to face the threat of *refoulement* from Hong Kong (to Vietnam), Malaysia (to Indonesia) and Thailand (to Cambodia).

But there were also a few qualified bright spots. Parties to the Cambodian conflict signed a peace accord on October 23, with numerous human rights safeguards built in. At the end of the year, however, the feasibility of that accord was in some doubt, and reports from Phnom Penh of fear — not only of the Khmer Rouge but also of the security forces of Prime Minister Hun Sen's government — were widespread. Afghanistan also inched toward peace after the announcement of U.N. Secretary General Javier Perez de Cuellar's five-point framework in May.

In another positive development, countries in the region that were once the first to say that human rights abuses were an entirely domestic affair began to concede ground to their critics. On November 2, China issued a White Paper on Human Rights, acknowledging the government's acceptance of the validity of the Universal Declaration of Human Rights but arguing that international standards must be viewed in the historical context of each country. Indonesia became a member of the U.N. Human Rights Commission and invited U.N. Special Rapporteur Pieter

¹ Indonesia in fact has three legal political parties — the ruling GOLKAR and two smaller parties — but the latter are tightly controlled by the government and would not be allowed to challenge GOLKAR seriously, let alone to win.

Kooijmans to Indonesia in November. Kooijmans was in East Timor when a massacre of demonstrators by the Indonesian military occurred on November 12. Malaysia and Indonesia, stung by the United Nations Development Program's publication of a "human freedom index" in May, in which Malaysia was rated on a par with Haiti and Indonesia on a par with North Korea in terms of respect for human rights, called for the development of an Asian concept of human rights. Any effort to move away from universal standards would be dangerous, but the Malaysian-Indonesian call reflected a recognition that human rights issues cannot be ignored.

External powers began to be more vocal on human rights in Asia, most importantly with the award of the Nobel Peace Prize to Aung San Suu Kyi, the detained Burmese opposition leader, and the passing of a U.N. General Assembly resolution in November condemning Burmese human rights abuses. The European Community (EC) told the six countries of the Association of Southeast Asian Nations (ASEAN, including Brunei, Indonesia, Malaysia, the Philippines, Singapore and Thailand) in May, at an EC-ASEAN dialogue in Luxembourg, and again in July, following the ASEAN prime minister's conference, that henceforth development aid would be linked to human rights. The EC countries also wrung from ASEAN a mild rebuke of the Burmese leadership, the first such criticism of Burma from its Asian neighbors. Japan was also unusually outspoken on Burma at the end of 1991, and a Japanese official even raised the possibility in November that the massacre in Indonesia might provoke a review of Japan's Official Development Assistance to Indonesia. The Japanese stance reflected a new policy articulated during the year that Official Development Assistance should be linked to the human rights performance of recipient countries.

Far and away the biggest cause of human rights violations in the region was war. Annual death tolls of civilians were in the thousands in Kashmir, Punjab and Sri Lanka. In Sri Lanka, the scale of the conflict approached conventional warfare with five thousand guerrillas of the Liberation Tigers of Tamil Eelam laying siege to an army post in July. Both sides engaged in summary executions, torture and disappearances. In Punjab and Kashmir, Indian security forces retaliated against whole villages and neighborhoods for ambushes by militants, and suspected guerrillas were arrested, tortured and often killed in custody. Counterinsurgency operations against a small separatist movement in Aceh, on the northeast coast of Sumatra in Indonesia, continued to result in widespread killing of civilians, mass arrests and torture during the

year.

The use of weapons that cannot distinguish between civilian and military targets, in violation of the laws of war embodied in the Geneva Conventions and their protocols, was another characteristic of war in Asia. In Afghanistan, the opposition *mujahedin* fired poorly aimed and inherently inaccurate Sakr-B rockets on population concentrations in Kabul and other cities. The Sri Lankan army bombed the Jaffna Peninsula in what appeared to be an indiscriminate manner; in addition, its 1990 bombing of the electric power grid in Jaffna left most of the peninsula without power needed for refrigeration of medicines, among other things. In Cambodia, the relief brought about by the signing of the peace accord was tempered by the realization of what the war would leave behind — the largest concentration of land mines per capita of any country in the world. The danger that mines pose to those returning from camps along the Thai-Cambodian border was so high that Asia Watch warned against mass repatriation of refugees until an effective mine-mapping and mine-clearing program was well underway. The indiscriminate way in which mines maim or kill, long after their military purpose has been served, led Asia Watch to call for an outright ban on their use, not only in Cambodia but around the world. Prince Sihanouk of Cambodia took up that call in a speech before the U.N. General Assembly in September.

Religion was manipulated for political ends. In Pakistan, the state's political use of the *shari'a* or Islamic law, and particularly the law on *zina*, or adultery, made women particularly vulnerable to abuse. In China, a government campaign against Catholic and Protestant activities intensified, and the Communist Party called religion a vehicle for "hostile infiltration from abroad" and "national splittism." The Indonesian army accused the Catholic Church in East Timor of fomenting anti-government activity and, in October, stormed a church where pro-independence youth had sought sanctuary.

Little progress was made during the year toward the creation of more open societies. In Thailand, a democratically elected government was overthrown in a military coup in February. In China, controls on freedom of speech, assembly and association remained tight. Cautious steps toward a more consultative form of government in Singapore were halted after the opposition in the August elections quadrupled its seats in the fifty-one-seat national parliament from one to four; Singaporean leaders decided that the increase was a popular rejection of their own version of glasnost. Freedom of expression took a beating all over, from

Afghanistan, where a newspaper editor was briefly detained for printing a "war-mongering" article, to Indonesia, where another editor received a five-year prison term for publishing the results of an opinion poll deemed offensive to Muslims. Wherever nationalist conflicts were present, speaking of independence became a dangerous act, whether in East Timor, Kashmir or Tibet. Urging reunification with North Korea was off-limits in South Korea; discussions of reunification with the republic of Mongolia was banned in the Chinese province of Inner Mongolia. In India, the government seized newspapers in Punjab and Kashmir, while separatist militants threatened and killed journalists.

Throughout the region, internal security acts permitting prolonged detention without charge or trial were used to arrest and hold political suspects for indefinite periods, sometimes without access to family or counsel. The Terrorist and Disruptive Activities Act in India, the Anti-Subversion Law in Indonesia, the Internal Security Act in Malaysia, and the National Security Law in South Korea are only a few examples of the laws used and abused in 1991. China continued to arrest and detain dissidents for the crime of "counterrevolution" which encompassed twenty-two separate acts.

The year was more notable for the continued detention of long-term political prisoners than for their releases. Wei Jingsheng, the pro-democracy activist in China, entered his thirteenth year in prison; he was believed to be working in a salt mine. Chia Thye Poh, suspected by the Singaporean government of belonging to the Communist Party, entered his twenty-sixth year of detention and restrictions on his liberty without charge or trial; since his release from prison in 1989, he has been forced to live in a form of limited house arrest on Sentosa Island.

The refugee crisis in Asia got no better. By mid-December, two planeloads of Vietnamese refugees had been sent against their will from the abysmal detention centers in Hong Kong back to Vietnam. While Hong Kong authorities claimed that the refugees were economic migrants, procedures to determine who was fleeing persecution were too flawed to accept that statement at face value. Burmese refugees in Thailand continued to face abuse from Thai authorities as well as the possibility of forced deportation. The Khmer Rouge in October made plans to force some 40,000 Cambodians in a camp called Site 8, in Thailand, across the border into Cambodia; they were only prevented from doing so by a massive international campaign and the quick action of international relief agencies along the border. The Indonesian and Malaysian governments agreed on but have yet to proceed with the

return of some two hundred refugees from Aceh who had fled to Malaysia in early 1991 and have been in detention ever since. Japan forcibly deported one Chinese dissident who had unsuccessfully sought political asylum but showed greater flexibility in handling requests for visa extensions from Chinese students than it had in 1990.

The Right to Monitor

Local human rights organizations were generally free to document and publicize abuses by their governments in India, Malaysia, Nepal, Pakistan, the Philippines, South Korea, Sri Lanka and Thailand. Yet, this freedom did not prevent at least two monitors in India from being killed for their work in 1991, or the harassment of human rights lawyers in Malaysia and the Philippines.

Human rights monitors also worked openly in Indonesia, although there were clear, if unwritten limits, as to what was acceptable. The government prevented members of the Legal Aid Institute in Jakarta from going into highly sensitive areas to conduct fact-finding missions and barred Institute lawyers from defending suspects in subversion trials in Aceh and East Timor.

In most countries of the region, however, human rights monitoring was considered a subversive activity. In China, members of a Shanghai group called the Study Group on Human Rights Issues in China were arrested in April, and individual efforts, such as those of Hou Xiaotian, wife of detained dissident Wang Juntao, were met with surveillance and temporary detention. In Vietnam, those members of a human rights group in Danang who had not fled as refugees to Hong Kong were in Vietnamese custody. Government antagonism has made it impossible for human rights monitoring groups to form legally in Brunei, Burma, Cambodia, China, North Korea, Singapore and Vietnam.

U.S. Policy

The Bush Administration by and large did not treat the protection of human rights as a high priority in Asia. In some cases, like Burma, where pariah governments ruled and strategic interests were minimal, the Administration was consistently critical, and pushed its friends in the region, like the ASEAN countries, to be so as well. In other cases where

strategic interests were high, notably China, the Administration seemed reluctant to press for reform of what remained one of the worst human rights records in the region, arguing that this would "isolate" the world's largest country. As a rule, the Administration was reluctant to move beyond verbal criticism to take concrete steps, or even threaten to take such measures, against major human rights abusers.

China continued to represent the biggest blot on the Bush Administration's human rights record. The Administration's decision in May to extend unconditionally Most Favored Nation trading status lifted the economic pressure on the Chinese government that had been one factor in the release of almost nine hundred detainees in 1990. If the Administration expected rewards in terms of human rights concessions from the Chinese for this move, it got none. It proceeded with a visit by Secretary of State James Baker to Beijing in November — a visit desperately desired by the Chinese government — despite having neither sought nor received any commitments on human rights in advance. Human rights ended up being a major focus of the trip, but it was largely because of pressure from outside the Administration, and the trip produced few results. The Administration sought information from the Chinese government about a list of political prisoners but then allowed the Chinese to sit on the list for nearly six months without demanding a response. One got the impression that the Administration saw human rights abuses in China as an irritant that it devoutly wished would go away, rather than as a major problem to be tackled vigorously.

The same thing could be said of the Administration's actions toward other countries, like Indonesia, where rather than offend a friendly government, the Administration played down the extent of human rights abuses in the Aceh region, asserting in February that it had no reason to believe that abuses were taking place on a massive scale. After the massacre in East Timor in November, the Administration quickly expressed regret, sent a team to Dili to investigate and called in the Indonesian ambassador, all to its credit, but the sharp contrast with its reaction to Aceh appeared to be because two American journalists witnessed and were injured in the course of the Dili killings. Unlike the Dutch and Canadian governments, the Bush Administration held back in using economic leverage to press Indonesia to account for the massacre.

U.S. law was invoked in a few Asian cases to press for human rights improvements in 1991. No country save Burma was denied foreign aid on the grounds that it engaged in a systematic pattern of gross abuses. In South Korea, were guarantees to potential U.S. investors from the U.S.

government's Overseas Private Investment Corporation (OPIC) were denied on the grounds of violation of worker rights. The small amount of U.S. development aid given to Thailand was suspended following the February coup, but that was mandatory under U.S. law rather than a decision taken voluntarily by the Administration out of concern for basic freedoms. Assistance for military training to Indonesia continued despite the killings in Aceh and East Timor, with the State Department continuing to insist that the training gave Indonesian officers a good grounding in professionalism and humanitarian behavior.

In many cases, the Administration did not speak with a single voice, sending mixed signals to offending governments. In Burma, the State Department and the Drug Enforcement Agency worked at cross purposes. In Afghanistan, the CIA reportedly continued to press the *mujahedin* to take the offensive as the State Department was working toward peace. These contradictory actions undermined the Administration's effectiveness.

The Work of Asia Watch

Asia Watch helped to define and generate attention to some of the key human rights issues in Asia in 1991. Two of those issues in China were the trials of key dissidents in early 1991 and the use of forced labor to produce products for export. In the first case, Asia Watch revealed hitherto unknown accounts of why dissidents like Chen Ziming and Wang Juntao had been branded the "black hands" of the 1989 pro-democracy movement, and obtained key documents from their trials. The wealth of information made it possible to see many of these dissidents as individuals with characters and personalities instead of faceless victims of a repressive government. In many ways it was the Asia Watch information on Chen and Wang that led Human Rights Watch Chairman Robert Bernstein to set up the Committee to End the Chinese Gulag, a campaigning organization headed by Fang Lizhi, Liu Binyan, Yuri Orlov, Cyrus Vance and Bernstein himself, which aims to work for the release of all those imprisoned for peaceful dissent in China.

Asia Watch also published articles from restricted circulation journals in China which demonstrated beyond any doubt that it was central government policy in China to produce export goods in labor camps, and that some of those goods were going to the United States in violation of U.S. law. In its efforts to uncover the truth about prison exports, Asia

Watch was primarily concerned about drawing attention to the use of political prisoners in the production of these goods, the appalling conditions under which prisoners were forced to work, and the subordination of humanitarian reasons for having inmates work to the economic imperative of boosting export earnings by relying on extremely cheap or unpaid labor. The issue of prison export became one of the outstanding human rights issues between China and the United States.

Another issue that Asia Watch helped to define was the problem of land mines in Cambodia. Relief workers along the Thai-Cambodian border had long known of the magnitude of the problem but international awareness of the issue was limited. The report, produced jointly by Asia Watch and Physicians for Human Rights in September, led Prince Sihanouk to call for a worldwide ban on mines, beginning in Cambodia, and encouraged the U.S. government to allocate more funds for mine-clearing programs. Scheduled for translation into French in early 1992, the report also helped to draw attention to the particular iniquities of mines as a weapon: their tendency to injure civilians more often than combatants; their durability for years, and sometimes decades, after the war they were used in is over; and the failure of most armed forces to record where mines are laid and to remove them after a battle.

The work on Aceh helped to generate international awareness to a little-known region of Indonesia and added to the pressure on the Indonesian government to allow a visit there by the International Committee of the Red Cross (ICRC) in July. However, the need for more pressure continues to be apparent, as the ICRC has not been permitted to make a return visit, let alone set up an office in the troubled area.

Cooperation with and support of local human rights monitors remained a high priority for Asia Watch. In India, human rights organizations working on Kashmir and Punjab saw the two Asia Watch reports produced on those areas in 1991 as supportive of their own efforts. In Indonesia, a Ford Foundation-funded internship program allowed two Indonesian interns from the Legal Aid Institute to work with Asia Watch during the year and helped to send Indonesian-speaking Americans to Jakarta to assist in translating key documents into English. Asia Watch staff responded to requests for help during the year from human rights monitors in virtually every country where human rights organizations were permitted.

One way of keeping up the contacts with such organizations was by travel to the region, and in the course of the year, Asia Watch staff and consultants visited Australia, Burma, Cambodia, China, East Timor, Hong

Kong, Indonesia, Japan, Malaysia, Pakistan, Sri Lanka, Thailand and Tibet.

AFGHANISTAN

Human Rights Developments

Prospects for peace in the thirteen-year-old conflict in Afghanistan, which appeared dismal by the close of 1990, gained new momentum in late 1991. However, despite the decision by the United States and the Soviet Union to cut off arms to the warring parties, the conflict appears unlikely to be over soon. Human rights abuses continued, including indiscriminate attacks against civilians by both government forces and elements of the Afghan resistance, the *mujahedin*, resulting in the loss of hundreds of lives.

Despite hopes for a U.S.-Soviet statement agreeing to a political settlement at the December 1990 meeting between U.S. Secretary of State James Baker and Soviet Foreign Minister Eduard Shevardnadze, the talks remained stalemated over the timetable for an arms cutoff. The December 20 resignation of Shevardnadze, prompted in part by the Soviet army's insistence on a greater role in foreign policy — including continued military support for Afghan President Najibullah — further set back the negotiations. As the two powers were distracted by the Persian Gulf war, U.S.-Soviet negotiations over a transition process leading to elections in Afghanistan remained stalemated. The deadlock centered on the interim role to be played by Najibullah. The Soviet Union continued to insist that Najibullah remain in power and that the powers of a transitional body be limited to organizing elections. The United States argued that Najibullah's command of communications and the security forces gave him an unfair advantage, so the transitional body should have control over these institutions during the election period.

Although the anti-Iraq alliance built during the Gulf crisis included most of the countries that had been at odds over Afghanistan, their cooperation in the Gulf war did not immediately bring them any closer to agreement about Afghanistan. Pakistan and Saudi Arabia remained committed to supporting a military victory by the *mujahedin*. The Saudi

government moved toward public support for a political settlement in Afghanistan, spurred by the decision of some *mujahedin* parties, notably the *Hezb-e Islami* (Islamic Party) of Gulbuddin Hekmatyar and the *Ittehad-e Islami Bara-ye Azad-e Afghanistan* (Islamic Union for the Liberation of Afghanistan) of Abdul Rabb Rasul Sayyaf, to denounce the Saudi position in the Gulf war. However, Saudi private and government sources continued to fund radical *mujahedin* elements, even though these groups had opposed the Gulf war and expressed support for Saddam Hussein.

The stalemate on the Afghan battlefield was broken briefly at the end of March when the eastern city of Khost fell to the *mujahedin*. Despite initial statements by the U.S. Administration that the fall of Khost signaled a new unity among the rebels, the military success was in fact more a result of Pakistani intervention than coordination among *mujahedin* commanders. However, the battle did exhibit some improvements in the *mujahedin's* respect for international humanitarian law. For the first time, captured government soldiers were seen promptly by the International Committee of the Red Cross (ICRC), and there were no confirmed reports of summary executions. However, the city, or what was left of it, was rapidly looted by *mujahedin* and allied tribal militia, and the victory changed little in the political arena.

On May 21, U.N. Secretary General Javier Perez de Cuellar issued a public statement outlining in broad terms the framework for a political settlement of the Afghan conflict. The statement reportedly reflected a consensus among the five external powers involved in aiding various groups in Afghanistan: the United States, the Soviet Union, Pakistan, Saudi Arabia and Iran. The plan called for a settlement based on an internationally assisted "transitional mechanism" which would enable the Afghans to hold "free and fair elections, in accord with Afghan traditions," accompanied by a cessation of hostilities and an end to military assistance to all Afghan parties by all external parties. The statement did not specify a role for Najibullah. Following further negotiations later in the year, Najibullah did express his willingness to step aside so long as his retirement was part of a peace package and his Watan Party was permitted to participate in the transitional government.

Meanwhile, abuses continued by both the Afghan government and *mujahedin* forces. Journalists reported that following the battle for Khost, and later during an assault on Gardez, a city sixty miles south of Kabul, the Afghan government launched Scud missiles into populated areas in the east and northeast of the country and also around Herat in the west, causing heavy casualties. The *mujahedin* also continued to fire rockets

indiscriminately into Kabul and other cities, killing civilians. In one such attack, rockets that landed in residential areas of Kabul on January 19 killed eleven people, five of them children, according to press reports. On August 14, rockets struck a crowded bus in Kabul, killing thirty passengers.²

Throughout 1991, the Afghan government continued to make pronouncements about democratic reform. In October, Najibullah called for provincial and local elections to be held in both government- and *mujahedin*-controlled territory, before the conduct of the national elections currently being negotiated through the U.N. Special Representative. He also called for the formation of an interim government to include the *mujahedin*, and for U.N. mechanisms to control the flow of arms to both sides.

The relaxation of strict press controls permitted some criticism of the government, but officials continued to demonstrate an unwillingness to allow government critics in Kabul genuine freedom of speech or the press when it came to discussion of the war or of fundamentalist *mujahedin* leaders. On August 12, Ghulam Sakhi Ghairat, the editor of a new and reportedly outspoken biweekly newspaper *Azadi (Freedom)*, was arrested and charged with "war propaganda" under Section 138 of the Constitution, which is frequently invoked to censor the press. Ghairat reportedly had published an article quoting the radical fundamentalist *mujahedin* leader Gulbuddin Hekmatyar. Ghairat was tried, given a suspended sentence and released on August 26. Almost immediately he became the co-founder, along with thirteen other intellectuals, of a new political organization called the Movement for the Freedom, Democracy and Unity of Afghanistan. In its first statement on September 17, the group demanded, among other things, the abolition of the Ministry of State Security which President Najibullah formerly headed. Ghairat's arrest attracted international criticism, which may have prompted officials in Kabul not to interfere with his new organization so long as it limited itself to criticisms of the current government and was not seen to advocate radical alternatives. This reflects a tendency of the government to permit criticism when it supports the government's general message of reform.

² See "Eleven Reported Slain in Kabul, *The New York Times*, January 20, 1991; "Rebel Raid Reportedly Kills 30 on Bus in Afghan Capital," *The New York Times*, August 15, 1991.

By the end of 1991, the ICRC, which has access to sentenced prisoners held by the Afghan government, had still not been granted access to government detainees under interrogation. Most of those under interrogation are captured *mujahedin*, or those suspected of supporting the *mujahedin* or of being involved in the March 1990 coup attempt. Most arrests are carried out by the Ministry of State Security, and there are few safeguards against arbitrary arrest and torture. In his 1991 report on human rights in Afghanistan, U.N. Special Rapporteur Felix Ermacora stated:

persons suspected of having acted against State security have been tortured during the process of interrogation by security personnel with a view to obtaining information about a presumed network engaging in anti-constitutional and terrorist activities....[T]he means of torture were described as electric shock, beating...cigarette burns and continuous deprivation of sleep.

Disappearance and murder of Afghan relief workers and political figures by *mujahedin* groups in Pakistan also continued in 1991. Some of these include:

- o In June, a prominent member of Afghan Mellat, a political organization which has been the target of attacks by the more fundamentalist *mujahedin*, was shot dead by unidentified gunmen as he left his home in Karachi.
- o Three Afghan workers with the Swedish Committee on Afghanistan were assassinated during the year, and in early July, two Afghan Red Cross workers were shot while traveling in an ambulance.
- o On July 9, Abdul Rahim Chinzai, a journalist and former government official under the deposed Afghan monarch Zahir Shah, was kidnapped by armed gunmen while on his way to Friday prayers in Peshawar. The abductors were reported by reliable Afghan sources to be members of Gulbuddin Hekmatyar's *Hezb-e Islami* party. Chinzai's whereabouts remain unknown, but he is believed to be held in a *Hezb-e Islami* prison near the border between Afghanistan and Pakistan.

- o On October 31, Abdul Rehman Zamani, the Afghan head of the Austrian Relief Committee, was injured along with two co-workers when unidentified gunmen sprayed his car with bullets while he was traveling in Peshawar.
- o Foreign relief workers also continue to come under attack. Four ICRC officials were kidnapped by *mujahedin* forces in February and held for seventy-five days — leading to the suspension of ICRC activities in some provinces.

While many of these incidents as well as scores of earlier kidnappings and murders occurred in Pakistan, the Pakistani authorities have made little if any effort to investigate or prosecute those responsible.

On September 13, a week after the failed coup in Moscow, the United States and the Soviet Union finally agreed to a mutual arms cutoff, to begin January 1, 1992. At about the same time, however, a number of *mujahedin* commanders supported by the Pakistani military intelligence agency Inter-Services Intelligence (ISI) launched an offensive against the city of Gardez. The assault coincided with reports that the ISI was providing the most abusive of the rebels with Iraqi weaponry captured during the Gulf war. By mid-October, the fighting had moved on to Jalalabad, in eastern Afghanistan, only to be called off abruptly before the end of the month. In the course of the Gardez and Jalalabad offensives, indiscriminate rocket attacks and bombardments by both sides resulted in many civilian casualties and an influx of new refugees into Pakistan.³

In November, *mujahedin* representatives led by *Jamiat-e Islami* (Islamic Society) leader Professor Burhanuddin Rabbani met with the Soviet foreign minister in Moscow to discuss the U.N. peace plan and other matters, including war reparations and Soviet prisoners-of-war. The visit was fraught with controversy among Afghans in Pakistan, as various *mujahedin* leaders alternately denounced and endorsed aspects of the discussions. The delegation of *mujahedin* leaders agreed to national elections to be held under the supervision of the Islamic Conference and the United Nations, but radical *mujahedin* leaders have continued to reject the plan.

³ Ahmed Rashid, "Mujahideen Muddle," *Far Eastern Economic Review*, October 31, 1991.

The Right to Monitor

Even with the promulgation of reforms under Najibullah's government in Kabul, the right to freedom of expression remained too circumscribed to permit genuine human rights monitors to function. The arrest of editor Ghairat on August 12 suggests that while certain kinds of criticisms on human rights issues may be tolerated, human rights monitoring by domestic groups investigating issues related to the war, such as the treatment of political detainees, clearly is not. The few quasi-independent groups able to function, notably the National Salvation Society, have limited their recommendations to subjects which already fall within the government's promised reforms: national reconciliation, elections and pluralism. The Afghan government has cooperated with international human rights organizations, including Asia Watch. Its failure to grant full access to the ICRC, however, remains an obstacle to human rights improvements.

In Peshawar, and in other areas of Pakistan and Afghanistan where Afghan *mujahedin* groups have support, human rights monitoring is a dangerous profession. Afghan exiles and refugees engaged in any activity perceived as inappropriate by the more radical *mujahedin* groups, especially those led by Hekmatyar, Sayyaf, and Yunis Khales, head of a second party called *Hezb-e Islami* (Islamic Party), have been imprisoned or killed. The victims of these abuses have generally been representatives of moderate or secular Afghan political groups, Afghans employed by Western and particularly Christian relief organizations, and Afghan or Pakistani journalists or others who have attempted to document *mujahedin* abuses.

U.S. Policy

The most important development in U.S. policy toward Afghanistan in 1991 was the agreement with the Soviet Union on an arms cutoff, to take effect at the beginning of 1992. The agreement promises to sever the supply line that has provided the resistance with two to three billion dollars in covert assistance over the past decade.

Throughout 1991, the State Department expressed support for a political settlement to the conflict that would lead to free and fair elections in Afghanistan. This sentiment was reflected in written testimony on June 20 by Assistant Secretary of State for Near Eastern

and South Asian Affairs John Kelly before the House Subcommittee on Asian and Pacific Affairs, in which he stated, "We...do not believe that the fall of Khost has shown that military victory is the path to a settlement, by either side." He went on to note that "many Afghans believe that, even were a military victory possible, the price in greater destruction of property and human suffering is too high to pay."

With momentum building toward agreement on a political settlement, the Administration presented a more balanced assessment of human rights and humanitarian law violations than it had in previous years. The State Department's *Country Report for Human Rights Practices in 1990*, published in February 1991, was considerably more accurate and balanced in its description of human rights in Afghanistan than has been the case previously. For the first time, the report included abuses by the *mujahedin*, notably disappearances, torture and political killings. The report also blamed both the government and resistance forces for violations of the laws of war, particularly indiscriminate attacks that resulted in heavy civilian casualties. However, the report also tried to excuse the *mujahedin* by noting that they "assert that they strive to minimize civilian casualties" when, in fact, the rockets that have caused these casualties are incapable of being aimed accurately and should not be used at all in populated areas.⁴

Similarly, in his June 20 testimony, Secretary Kelly observed that while "the behavior of combatants on both sides leaves much to be desired," increased cooperation with the ICRC in both government- and resistance-controlled areas marked a significant improvement. He appropriately used the occasion to express the Administration's concern that the *mujahedin* abide by international norms.

However, the State Department's verbal and diplomatic support for the peace process appears not to have been shared by the U.S. Central Intelligence Agency (CIA) and its Pakistani ally, the ISI, which continued to support a military approach fraught with abuse. The rift in U.S. policy was reported by *The New York Times* in January in an interview with Undersecretary of State for Political Affairs Robert Kimmitt who was reported as having "battled with [CIA] officials who would like to unleash the guerrillas in Afghanistan in one last effort," while Secretary Baker worked to "coax the rebels and the Najibullah regime into democratic elections." In the interview, Kimmitt complained that agency officials

⁴ See Human Rights Watch, *World Report 1990*, p. 257.

were "just bucking policy."⁵ In February, as negotiations between the United States and the Soviet Union remained stalled, *The New York Times* reported that "the [CIA], in a long policy dispute with the State Department that it now appears to be winning, has been arguing that negotiations cannot end the war and that Washington should step up its efforts to help the guerrillas win a military victory."⁶

Since the early 1980s, the ISI, in collaboration with the CIA, has used its control over the arms pipeline to run the war and favor abusive *mujahedin* parties, particularly Gulbuddin Hekmatyar's faction, which used U.S.- and Saudi-financed weapons to launch indiscriminate attacks on Afghan cities, killing countless civilians. Even after Pakistan's civilian government agreed in June to join the other parties in endorsing the U.N. peace process, ISI commanders continued to encourage military offensives by the most radical and abusive of the *mujahedin*. The indiscriminate assaults on Gardez and Jalalabad in late 1991, both of which were backed by the ISI, brought about no political change but did induce retaliatory strikes by Afghan government forces and caused a large number of civilian casualties. According to a report in *The Washington Post*, the weapons used in these offensives included captured Iraqi artillery, tanks, machine guns and mortars. This weaponry was supplied to the *mujahedin* by the United States, Saudi Arabia and Pakistan in the months following the Gulf war when "the United States and other supporters of the *mujahedin* were pursuing a two-track policy of backing diplomatic efforts to find a peaceful solution to the...war while at the same time maintaining military pressure on the Kabul government."⁷ The supply of captured Iraqi and other weapons by the United States to *mujahedin* groups that have engaged in violations of the laws of war makes the U.S. a party to these abuses.

These ISI activities underscore how little the U.S.-Soviet agreement on ending arms supplies will mean so long as the other parties to the

⁵ Clifford Krauss, "In Hot Spots Like the Gulf, He's Baker's Cool Hand," *The New York Times*, January 3, 1991.

⁶ Clifford Krauss, "Afghanistan, the Place Where the Cold War Didn't Go Out of Style," *The New York Times*, February 17, 1991.

⁷ Steve Coll, "Afghan Rebels Said to Use Iraqi Tanks," *The Washington Post*, October 1, 1991.

conflict have access to arms and exhibit little interest in peace. Moreover, all sides in the conflict have stockpiled enough weapons to keep the war going for years to come. Among these weapons are land mines, which all parties continue to use, frequently without mapping or marking the sites in violation of the laws of war, adding to the millions of such devices scattered all over the country. Continuing hostilities prevent any systematic effort at mine removal.

The Work of Asia Watch

In February 1991, Asia Watch published a report, *The Forgotten War*, which documented human rights and humanitarian violations by the Afghan government and the *mujahedin* since the Soviet withdrawal. The report was based on a mission to Pakistan and Afghanistan between June and August 1990. Throughout 1991, Asia Watch engaged in discussions with U.S. officials and Afghan government representatives about human rights concerns in the report.

In July, Asia Watch issued a statement condemning the disappearance in Peshawar of Abdul Rahim Chinzai, apparently at the hands of *mujahedin* leader Gulbuddin Hekmatyar, and urging the Pakistani authorities to take steps to ensure his release. In August, Asia Watch intervened to protest the detention of editor Ghairat, who was arrested in Kabul on charges of disseminating "war propaganda."

In August, Asia Watch published a newsletter, "Toward a Political Settlement in Afghanistan: The Need to Protect Human Rights," which outlined different human rights safeguards that might be included in a settlement of the Afghan conflict. The document was based on an analysis of peace accords in Cambodia, Namibia, El Salvador and Angola. It was presented to senior U.N. officials and circulated among the major parties negotiating the peace process. It was also translated into Russian.

BURMA (Myanmar)

Human Rights Developments

Refusing to respect the results of the 1990 general elections, Burma's military leaders intensified their crackdown on political dissent throughout the country in 1991. Repression was worse than any other time in recent years, marked by a complete lack of basic freedoms and the continuing imprisonment of thousands of suspected opponents of the ruling State Law and Order Restoration Council (SLORC). By the middle of the year, the crackdown extended beyond members of the main opposition parties to include a massive purge of those employed in the civil service, schools and universities. In late 1990 and early 1991, SLORC also heightened its offensive against ethnic minority insurgent groups, resulting in widespread civilian casualties and the displacement of tens of thousands of people along Burma's borders. The award of the Nobel Peace Prize to opposition leader Aung San Suu Kyi helped to focus attention on SLORC's disastrous human rights record.

The crackdown on members and supporters of Aung San Suu Kyi's party, the National League for Democracy (NLD), was especially severe. The NLD had won an overwhelming victory in the May 1990 elections, capturing over eighty percent of the popular vote. Rather than transfer power to an NLD-dominated People's Assembly (*Pyithu Hluttaw*), SLORC instead mounted a campaign aimed at destroying the NLD and, later, all potential sources of political opposition to the regime. Hundreds of NLD officials, including over fifty of the newly elected People's Assembly representatives, were arrested in a sweep that began in July 1991. Earlier in the year, arrested NLD People's Assembly representatives were sentenced to between ten and twenty-five years in prison by military tribunals.

Severe mistreatment is believed to have led to the death in detention of at least three senior NLD officials. Tin Maung Win, an NLD People's Assembly representative, died in early January in Insein Prison, only a few weeks after his arrest. Maung Thawka, a prominent writer and senior NLD official, died of a heart attack in June at the Rangoon General Hospital, three days after having been moved from Insein Jail, where he was believed to have been badly tortured. Maung Ko, a leading NLD

labor organizer, died in Insein Jail after being tortured in November 1990.

NLD President Tin U and other senior officials originally sentenced in 1989 and 1990 had their sentences extended in 1991. For example, Tin U's sentence was extended from three to seventeen years. At the beginning of 1991, five of the NLD's original Central Executive Committee members were in prison, and party leader Aung San Suu Kyi remained under house arrest. NLD offices were closed in many towns, party activities were banned, publications were stopped, and the party was prohibited from making public statements. Anyone involved with the NLD became suspect in the eyes of the military authorities and subject to harassment and the threat of arrest. By mid-1991, the NLD had largely collapsed as a working political organization.

The SLORC also began in 1991 to target smaller political parties and political figures generally considered more "moderate" in their opposition to the regime than the NLD leadership. In January, Cho Cho Kyaw Nyein, leader of the Anti-Fascist People's Freedom League (AFPFL), was arrested on charges of being in contact with insurgent and "underground" groups. He was later sentenced to nine years in prison, and the AFPFL was deregistered. By May, a total of nine political parties had been deregistered. These included the League for Democracy and Peace, founded by former Prime Minister U Nu, who is under house arrest; and the National Democratic Party, founded by Sein Win, head of the government-in-exile on the Thai border.

In July, several senior members of the United Nationalities Development Party (UNDP) were arrested on a series of charges including contact with the insurgent Karen National Union. Although UNDP leader Aung Gyi, a former army vice chief of staff, was not arrested, he was implicated in the charges and criticized in the official press.

Throughout 1991, SLORC carried out a huge purge of the civil service, schools and universities. By October, as many as fifteen thousand civil servants were reported to have been fired on suspicion of being opposed to the regime. Beginning in January, civil servants were required to answer a series of questions about their role in the 1988 uprising and their views of the military, political parties and SLORC policy. On October 4, Khin Nyunt, SLORC first secretary, warned public servants that a series of directives had already been issued prohibiting them from political activities. Public servants were also obliged to see that their families refrain from anti-government activities.

Similarly, hundred of teachers and university lecturers are reported to have been fired. Although schools and universities were gradually reopened during 1991 after nearly three years of closure, all educational institutions remain under strict military supervision, and the activities of students are closely monitored.

On December 10 and 11, heavily armed soldiers and police crushed demonstrations at Rangoon University coinciding with the Nobel Prize ceremony in Oslo, putting an end to the largest protests to take place in Burma since the September 1988 uprising. There were unconfirmed reports of hundreds of arrests. Burma's universities were shut down and thousands of troops were deployed throughout Rangoon. There were also protests and arrests in Mandalay, and the state-run radio blamed "unscrupulous subversive elements" for a bombing at a railway station on December 11.⁸

Martial law remained strictly enforced, as local military tribunals and township-level Law and Order Restoration Councils worked to ensure an end to independent political activity. In May, General Khin Nyunt, head of SLORC's Directorate of Defense Services Intelligence (DDSI) and a SLORC member, quoted the Duke of Wellington on the nature of Burma's martial law: "Martial law is neither more nor less than the will of the General who commands the army. In fact, Martial Law means no law at all." In a similar vein, the SLORC chairman, General Saw Maung, said in May: "Martial law means the will of the ruler. He can do anything he wishes to do." Such statements reveal that Burma's military authorities feel unconstrained in crushing political dissent.

A large military presence is clearly visible in Rangoon and most other towns. Troops and armored personnel carriers patrol major streets and are deployed outside all public buildings. Gatherings of more than four people are banned, movement out of one's township must be reported to local military authorities, and all media remain under tight state control.

Burma's jails remain inaccessible not only to international human rights and humanitarian organizations, U.N. agencies and foreign diplomatic personnel, but also, in many cases, to families of detainees. Torture and other forms of severe mistreatment continue to be a routine part of interrogation, both in the main jails such as Insein Jail in Rangoon and Tharrawaddy Jail in Pegu Division, and at Yay Kyi Aing,

⁸ Kevin Cooney, Reuters, December 12, 1991.

the DDSI headquarters, where political prisoners may be detained indefinitely without charge.

Political prisoners are reportedly used for forced labor. In early 1991, three hundred political prisoners who had been forced to work at a mining camp in northern Shan State, a few miles from Lashio, were reported to have died from mistreatment or malnutrition. Asia Watch could not independently confirm the report.

SLORC also continued its policy of forced relocation. Since late 1989, over 500,000 people are believed to have been forcibly moved from their homes to military-built resettlement towns. Although reasons for the relocations vary, they are generally believed to be politically motivated, with the intent of breaking up potential areas of opposition to the regime. Many people were moved to areas without proper sanitation or access to markets or places of work. The forced relocations are believed to be a major source of the new exodus of ethnic Burmese refugees to the Thai border, described below. In 1991, the forced relocations were particularly severe in northern Arakan, along the Bangladesh border. Several thousand Burmese Muslim refugees are known to have fled to Bangladesh since late 1990 to avoid the increasing military persecution accompanying the relocations. Mosques were reported to have been destroyed and entire communities forced to move to make way for military projects. Burmese Muslims are often denied citizenship rights, and many Muslims born in Burma have been detained for years on charges of "illegal immigration."

In 1991, SLORC stepped up its military offensives against ethnic minority insurgent groups, particularly the two largest, the Karen National Union along the Thai border and the Kachin Independence Organization, along the Chinese and Indian borders. SLORC strategy has included targeting civilian populations suspected of assisting insurgents. Large numbers of civilians in Kachin State are believed to have been moved to strategic villages under military control in early 1991. Several thousand others were reported to have fled their homes to areas along the Chinese border.

The destruction of civilian property, rape, torture and summary execution of civilians during Burmese military offensives were widely reported in 1991, as in previous years. The Burmese army also forcibly conscripted ethnic minorities to carry military supplies during military campaigns. Many of these porters die as a result of mistreatment, lack of adequate food and water, and use as "human mine sweepers." At least 100,000 people are thought to be internally displaced because of ongoing

fighting in Karen and Kachin States alone.

Refugees from Burma continue to flee to neighboring countries in substantial numbers, with as many as 500,000 Burmese residing in Thailand, Bangladesh, India and China. The largest movement of refugees in 1991 involved between 15,000 and 25,000 who fled from Burma's Arakan State to Bangladesh. The refugees are primarily Rohingya Muslims who are culturally distinct from the Arakanese Buddhists whose culture is dominant in Burma. The campaign against this population began in late 1989, during the intensified Burmese military campaign against minority groups. By 1990, the Burmese military effectively controlled most of Arakan State. Among the military abuses reported from the area are forced labor, rape, arbitrary arrest and wanton destruction of property.

Also in 1991, approximately nine thousand Karen, four thousand Mon and one thousand Karenni fled to Thailand to escape military repression, bringing to nearly sixty thousand the number of refugees living in camps along the Thai border. To date, an estimated fifty thousand refugees from Burma's Kachin territory have fled to Tibet and four thousand to India. There are also several thousand Burmese dissidents who have fled since the 1988 uprisings and established camps along Burma's borders alongside minority refugee communities.

The refugees from Burma living just inside Thailand have been allowed to negotiate safe haven agreements with local authorities. In 1991, however, this arrangement became increasingly tenuous. *The Bangkok Post*, in an August 29 article, reported, "Military officers of the 9th Infantry Division and district officials in Sangklaburi District have told the Mon National Relief Committee to plan for the repatriation of all Mon refugees — more than 10,000 — to Burma by April 1992." No international agency such as the U.N. High Commissioner for Refugees (UNHCR) or the International Committee of the Red Cross is allowed to operated along any of Burma's borders, making the refugees living there more vulnerable to such threats of *refoulement*.

A smaller number of refugees, mostly Burmese students, made their way to Bangkok to try to register as refugees with the UNHCR office. There are now some three thousand such Burmese in the Thai capital. Only half have been accepted as refugees; one thousand have been rejected, and approximately five hundred cases are pending. Thailand has not allowed the UNHCR to assist this or any other group of asylum-seekers from Burma. For its part, the UNHCR continues to evaluate Burmese refugee claims using unusually narrow criteria so as to deter an

influx of refugees to Bangkok, prevent a confrontation with Thai authorities, and avoid an expensive urban relief program.

The UNHCR and other concerned parties have been negotiating with the Thai government for a "safe area" where those seeking political asylum can reside. However, in September 1991, the Thai government approved the establishment of a "holding center" for all asylum-seekers from Burma who were registered with the UNHCR. The Ministry of Interior proposed to open this center in April 1992 at a site along the Burmese border in Ratchaburi province. To date, Thai officials maintain that the UNHCR will not be granted any presence in the center, raising serious questions about whether it will be a workable alternative to repatriation or, with no access by outside agencies, a kind of prison. By the end of 1991, Thai authorities were holding over one hundred asylum-seekers from Burma in immigration jails pending the establishment of the "holding center." Those detained had gone on hunger strikes and inflicted injuries on themselves to draw international attention to their fears about the "holding center." Many suffered physical abuse and extortion in prison.

An increasing number of Burmese refugees fled to Thailand during 1991 from the Tennasserim Division, an administrative unit deep in the Burmese delta. These refugees claim fear of being conscripted for forced labor, extortion by local military authorities, and threats of arrest against those thought sympathetic to opposition groups, as well as general economic hardship.

Overall, dissatisfaction with the Burmese regime remains extremely high, and only the severity of ongoing repression prevents significant public protest. SLORC's increasingly hard-line position may be seen as reflecting increased desperation on the part of a regime lacking any popular support or clear direction.

The Right to Monitor

The severity of repression made open human rights monitoring impossible inside Burma, although Burmese students and representatives of minority groups living in Thailand developed an increasingly effective human rights documentation network in 1991.

U.S. Policy

With peaceful political dissent in Burma all but silenced, international pressure against SLORC became increasingly important. Aung San Suu Kyi's winning of both the 1991 Nobel Peace Prize and the European Parliament's Sakharov Prize clearly marked increased international concern for Burma's worsening human rights situation.

On November 29, at the United Nations, a resolution on the human rights situation in Burma passed the General Assembly's Third Committee by a unanimous vote. This was the first critical human rights resolution naming an offending nation ever to receive unanimous endorsement by the General Assembly. The mildly worded consensus resolution, sponsored by Sweden and co-sponsored by India, urges Burma to "allow all citizens to participate freely in the political process in accordance with the principles of the Universal Declaration of Human Rights."

On several occasions, U.N. Secretary General Javier Perez de Cuellar called on SLORC to release Aung San Suu Kyi from house arrest. On November 4, Perez de Cuellar's spokesperson indicated deep disappointment over SLORC's decision to prevent a U.N. special rapporteur appointed by the Commission on Human Rights, Professor Yozo Yakota, from seeing the opposition leader when he visited Burma in October. Yakota was given access to Insein Prison in Rangoon but was reportedly not allowed to speak with any political prisoners.

In July, the European Community (EC) formalized a *de facto* arms embargo against Burma, and in May, the annual meeting between the EC and representatives of the Association of Southeast Asian Nations (ASEAN) in Luxembourg produced the first public, if mild, criticism of Burma by ASEAN. The statement expressed hope that the situation in Burma would improve so that Burma could take its place "among the dynamic Asian economies."

The Bush Administration continued its hard-line policy against the Burmese government, restricting high-level contacts and refusing to resume any bilateral assistance. In June, at the ASEAN foreign ministers' conference in Kuala Lumpur, Secretary of State James Baker condemned the human rights situation in Burma, saying, "We view with dismay the situation in Burma where a self-appointed military leadership regularly

violated basic human rights."⁹ Secretary Baker's statement followed high-level consultations among U.S., British and Australian officials. The ASEAN ministers, particularly the Thai foreign minister, argued that pressure on SLORC would be counterproductive, but ultimately decided to send Raul Manglapus, the Philippines foreign minister, to Rangoon for talks in pursuit of a policy of "constructive engagement." However, Manglapus's public announcement of his mission apparently angered SLORC and, by year's end, the mission had not taken place.

Also at the Kuala Lumpur meeting, and in accordance with the Moynihan Amendment to the 1990 Customs and Trade Act mandating U.S. economic sanctions against Burma, the United States decided not to renew a bilateral textile agreement with Burma which had lapsed on December 31, 1990. In 1990, textiles accounted for approximately nine million of the twenty-two million dollars of Burmese exports to the United States each year. However, while the United States consulted with other industrialized countries regarding the possibility of imposing multilateral economic sanctions, as the amendment required, the Administration maintained that "there was no significant support for [such sanctions] generally, because of the paucity of economic relations of any country with Burma."¹⁰

The State Department in 1991 continued efforts to develop some coordination between the United States and other industrial democracies in their policy toward SLORC. The State Department is believed to have pushed informally for all major donors, especially Japan, to maintain their aid cutoff and for the World Bank and other multilateral institutions to refrain from future lending. At its annual meeting in Bangkok in mid-October, the World Bank reaffirmed its decision not to loan to Burma, and a bank official in charge of Asia publicly denounced human rights violations by SLORC. However, international action against the military regime remains largely uncoordinated.

Despite the Administration's overall hard-line policy, the U.S. Drug Enforcement Agency (DEA) retained a significant presence in Rangoon.

⁹ Bernama (Malaysia) News Service, as reported in Foreign Broadcast Information Service, June 24, 1991.

¹⁰ Testimony of Kenneth Quinn, deputy assistant secretary for East Asian and Pacific affairs, before the House Subcommittee on Asian and Pacific Affairs, October 18, 1991.

Its representatives met regularly with Burmese officials and were shown in the Burmese press attending SLORC-organized functions in northeastern Shan State. The DEA was known to be lobbying within the Administration for a resumption of the anti-narcotics assistance terminated in 1988, but was believed to have been successfully opposed by the State Department and others.

Although the Administration's general stand on Burma has been firm in maintaining pressure on SLORC, U.S. law suggests that more be done. The Administration should, at a higher level than has been the case so far, formulate and carry out a program of sustained international economic sanctions against the regime. The Administration and other Western governments have long argued that economic sanctions would be ineffective given the small size of Western trading with Burma in comparison with that of China or Thailand, which presumably would not join an embargo. What this argument overlooks is the difference in the nature of the trade. Whereas China and Thailand export mainly basic consumer goods for Burma's private markets, Western countries, Japan and South Korea are still important sources of spare parts and other goods that are critical for Burma's state-run industry. In addition, although U.S. and other western oil companies are not yet producing oil in Burma, their continuing presence provides an important reassurance to SLORC that large oil revenues may not be far off.

U.S. policy toward Burmese refugees involved continuing humanitarian assistance to displaced Burmese (including "students" and ethnic minorities) along the Thai border and to asylum-seekers in Thailand itself; resettling a very small number of refugees in the United States; providing scholarships for selected Burmese refugees to study in the United States for two years; and privately encouraging the Thai government not to repatriate Burmese "students" and dissidents clearly facing a danger of persecution if returned to Burma.

The U.S. Congress continued to advocate increased U.S. and multilateral pressure on behalf of human rights and democratization in Burma. Members of Congress addressed letters to SLORC about individual prisoners subject to arbitrary arrest and torture, and two resolutions were unanimously adopted in 1991. The Senate in May urged the imposition of additional U.S. economic sanctions and called for increased Thai protection for Burmese refugees. In November, the House passed a strongly worded measure which also called for further sanctions as well as U.S. pressure on China to cease its arms shipments and economic aid to SLORC.

At the end of 1991, the Administration's nomination of an ambassador to Burma was pending before the Senate Foreign Relations Committee, and Congressional opinion was divided on whether the United States should post an ambassador to Rangoon under current political circumstances.

The Work of Asia Watch

Asia Watch in 1991 issued several updates on arrests of NLD members and, in December, published a newsletter on the treatment of Burmese refugees in Thailand. During a mission to Tokyo in March, Asia Watch representatives met with officials of the Ministries of Trade and Industry, and Foreign Affairs, as well as the Japanese Business Council (Keidanren), to discuss how Japanese economic and diplomatic leverage might be used to promote human rights in Burma. Beginning in September, Asia Watch began to convene a series of roundtable discussions of Burma to keep various organizations informed of developments within the U.N. General Assembly. A human rights fact-finding mission was sent to the Sino-Burmese border in early December and a report was expected in January 1992.

CAMBODIA

Human Rights Developments

The most important human rights development in Cambodia in 1991 was the formal signing in Paris on October 23 of the Comprehensive Political Settlement of the Cambodia Conflict. The agreement was signed by the four warring parties — the government of Prime Minister Hun Sen in Phnom Penh, the Khmer People's National Liberation Front (KPNLF), the Sihanouk National Army (ANS) and the Khmer Rouge — as well as all of the relevant external powers, including the five permanent members of the United Nations Security Council.

The agreement is critically important to the future of human rights in Cambodia for several reasons. It contains important human rights provisions which appear to guarantee the ability of the United Nations, the International Committee of the Red Cross, and domestic organizations as they emerge to monitor the human rights situation, as well as safeguards intended to prevent any recurrence of the mass killings of the Khmer Rouge period. The agreement provides for the release of prisoners of war and "civilian detainees" arrested because of their political affiliation or activities. It states the intention of the transition administration in Cambodia to abide by international human rights agreements and standards. And it recognizes the importance of clearing the land mines that have maimed and killed indiscriminately and represent a major obstacle to the safe return of the 350,000 refugees along the Thai-Cambodian border.

The momentum that led to the final agreement began on April 26, when representatives of the four parties agreed to a cease-fire to begin on May 1. A meeting was convened in early June in Jakarta but became bogged down over the question of leadership of the Supreme National Council (SNC), a body composed of six representatives of the Phnom Penh government and two representatives of each of the three resistance factions. The SNC was to serve as the supreme Cambodian authority pending elections. A meeting of all four parties held later that month in the Thai beach resort of Pattaya produced unanimous agreement on an "unlimited" cease-fire and the cessation of foreign arms supplies. In July, the four parties met in Beijing and reached agreement on a number of vexing issues including the naming of Prince Sihanouk as chair of the SNC and the appointment of a delegation to the U.N. General Assembly to be headed by the prince.¹¹ The SNC also requested the United Nations to send a survey mission to help monitor the cease-fire and arms cutoff.

The Hun Sen government strongly opposed complete demobilization of troops, believing that the Khmer Rouge could not be trusted to comply and thus would be handed an opportunity to seize military control. In a compromise reached in Pattaya at the end of August, all factions will demobilize seventy percent of their military forces and submit the

¹¹ The delegation to the United Nations includes Hun Sen and Hor Nam Hong of the Phnom Penh government as well as Khieu Samphan of the Khmer Rouge.

remaining thirty percent to U.N. supervision in specific "cantonment areas."¹² Agreement on the remaining issue, elections, was reached on September 19 in New York, with a decision to use a system of proportional representation within regional geographic constituencies.

By October, the planned signing of the agreement had had consequences both good and bad. On the positive side, the Hun Sen government released 1,034 prisoners, including what the Cambodian government news agency described as 442 political prisoners and 483 prisoners-of-war in early October.¹³ Cambodia's most prominent political prisoner, Ung Phan, Cambodia's former minister of transport who was detained in May 1990 for trying to form a new political party, was released on October 17. In a special congress that met in Phnom Penh between October 16 and 19, the ruling People's Revolutionary Party of Kampuchea formally renounced Marxism-Leninism and decreed that henceforth the newly named Cambodia People's Party would pursue a multi-party system with full separation of powers and a president and national assembly elected by universal suffrage.

On the negative side, the Khmer Rouge made plans to move some 40,000 residents of Site 8, a camp along the Thai-Cambodian border which had become the Khmer Rouge's international showcase, into Cambodia before the final agreement was signed. On September 30, sixteen camp administrators who had been elected by camp residents were taken across the border into a military camp and replaced by what appeared to be Khmer Rouge hardliners. The international relief agencies on the border raised the alarm, especially when they learned that all camp residents had been told to expect to be moved between October 20 and 23. The area to which the Khmer Rouge had planned to move them was believed to be rife with malaria and ridden with land mines. International pressure succeeded in halting the move, but there was a strong belief that all three of the resistance factions intended to move as many as possible of the residents of the camps along the Thai

¹² The demobilization issue continues to present difficulties. No agreement has been reached on the number of fighters in each military group to which the reductions would apply. It also appears that paramilitary forces are not included in the definition of "military forces."

¹³ SPK, October 30, 1991, as reported in Federal Broadcasting Information Service, October 30, 1991.

border back into Cambodia before any election takes place. Four of the sixteen Site 8 administrators have returned to Thailand; the fate of the others remained unknown at year's end.

Even with the agreement signed, Asia Watch remained concerned about the problem caused by land mines in Cambodia. In some ways, the agreement raised the profile of that problem because, suddenly, the repatriation of some 350,000 people in Thailand seemed like a real possibility. If the mines are not located and cleared, the dangers to returning refugees will be high. Cambodia already has the highest percentage of inhabitants who are physically disabled because of mines of any country in the world. In 1990, almost as many people died as were maimed by mines, often because of lack of transport to get them to medical facilities or lack of nearby medical care entirely. Most of the casualties were civilians. The use of mines in Cambodia violates important principles of customary law relating to armed conflict, including the obligation of warring parties to minimize harm to civilians. Over the last twenty years, the parties to the conflict have not recorded or posted notices of where they laid mines and, in many cases, never removed the mines when the fighting in a particular area ceased. The United States, Vietnam, the Soviet Union and China have been the major suppliers of mines, leaving them with particular responsibility to help with mine clearance.

Another problem looming on the horizon as 1991 ended was how the Phnom Penh government would protect the lives of returning members of the resistance factions, particularly the Khmer Rouge, while at the same time moving toward the greater freedoms of expression and assembly that will be necessary if elections are to take place in accordance with the settlement. The problem was made particularly acute when Khieu Samphan, the Khmer Rouge leader, and former Khmer Rouge Defense Minister Son Sen were nearly lynched in Phnom Penh on December 3. There was widespread speculation that a demonstration against their arrival in the capital had been quietly encouraged by the Phnom Penh government, although there was no indication that a physical attack had been foreseen.

The Right to Monitor

There are no known human rights organizations in Cambodia and, until the ruling party platform changed in October, restrictions on

freedom of association made the establishment of such an organization impossible. A number of groups have emerged to study and promote human rights in Site 2, the Cambodian refugee camp run by the KPNLF.

U.S. Policy

The major goal of U.S. policy in 1991 was to forge a settlement, out of the belief that an agreement would be the best way of preventing a return to power of the Khmer Rouge. The Bush Administration promised that once the agreement had been signed and implementation had begun, the trade embargo against Cambodia would be lifted and a liaison office would be opened in Phnom Penh. Charles Twining arrived in Cambodia on November 18 as a special envoy to the SNC.

Aid allocations were directly tied to progress in the settlement. In 1990, Congress had allocated some \$25 million for humanitarian and development assistance programs in fiscal year 1991, to be spent both in areas controlled by the Phnom Penh government and areas controlled by the non-communist resistance (NCR). In early 1991, there was strong concern expressed in Congress that the NCR was cooperating militarily with the Khmer Rouge. The Administration opposed any cutoff in aid to the NCR and, on February 26, submitted a report required by the terms of the 1991 Foreign Aid Appropriations bill asserting that there was no evidence to substantiate that the NCR and the Khmer Rouge "have been fighting as an integrated force." However, the report admitted that there had been some sharing of supplies between the ANS and the Khmer Rouge and that the ANS in some cases had "conducted coordinated attacks with the Khmer Rouge."

In testimony before Congress in April, Assistant Secretary of State for East Asian and Pacific Affairs Richard Solomon said that because of these reports of "tactical" cooperation, no funds from the total allocated for fiscal year 1991 had been delivered since January. Later that month, after an assessment team returned from Cambodia, the U.S. Agency for International Development (USAID) authorized the release of \$7 million to buy medicine, school supplies and tools and to provide training in development skills for Cambodians in areas controlled by the NCR.¹⁴ The release of aid appeared more a result of political changes and moves

¹⁴ *Bangkok Post*, May 19, 1991.

toward a settlement than of conclusive evidence that tactical cooperation had ended. In September, after the settlement was clearly on track, USAID gave \$5 million in grants to private organizations for the care of children and war victims inside Cambodia and announced that another \$10 million would be awarded in the near future.¹⁵ In mid-October, Secretary Solomon announced that over \$25 million had actually been spent in 1991 in Cambodia in both government- and NCR-controlled areas, making the United States the largest aid donor in Cambodia.¹⁶

Members of Congress spoke out forcefully against Khmer Rouge plans to repatriate residents of Site 8 forcibly, and the Bush Administration joined other members of the U.N. Security Council in pushing for a public denunciation of the move. The denunciation was thwarted when China refused to make a public statement, although it did apparently respond to pressure from Security Council colleagues to urge the Khmer Rouge privately not to go ahead with the transfer.

The Work of Asia Watch

Asia Watch devoted most of its efforts on Cambodia to the question of land mines. In April, a team from Asia Watch and Physicians for Human Rights traveled along the Thai-Cambodian border and within Cambodia to interview soldiers, doctors, relief workers and mine victims. Its findings were published in September in a report entitled *Land Mines in Cambodia: The Coward's War*. The report was delivered to members of the Supreme National Council meeting in New York during the U.N. General Assembly, and based on its conclusions, Prince Sihanouk changed the prepared text of his September 26 speech at the United Nations to include a call for a worldwide ban on mines. He also sent a message to all of his followers living in camps along the Thai-Cambodian border not to return home until the mines problem had been addressed. The September report received widespread international publicity and helped to spur the allocation of additional funds from USAID for mine-clearance programs.

¹⁵ *The Washington Post*, September 21, 1991.

¹⁶ Testimony before the House Subcommittee on Asian and Pacific Affairs, October 17, 1991.

In October, when Asia Watch was alerted to the imminent forced repatriation of Cambodians in Site 8, it informed key members of Congress, arranged for letters to be faxed to the U.N. Missions of the five permanent members of the Security Council, and issued a news release. These efforts were part of a worldwide alert network of nongovernmental organizations and may have helped to prevent the Khmer Rouge from carrying out its plans.

CHINA AND TIBET

Human Rights Developments

If anything, the Chinese authorities showed themselves even less willing in 1991 than in 1990 to ease up on the relentless repression that they have pursued since the military crackdown in Beijing and other cities on June 4, 1989. The year brought no large-scale releases of pro-democracy activists, unlike 1990, when a total of 881 such releases were announced by the authorities. Instead, as if to symbolize the regime's unrepentant stance in the face of international censure, the year began with the biggest wave of dissident trials in China since the summer of 1989. Dozens of leading Tiananmen activists — some of them dubbed "black hands" of the movement — were brought before the Beijing Intermediate Court and sentenced, after wholly unfair trials, to prison terms ranging from two to thirteen years.

Meanwhile, thousands of other pro-democracy activists (the precise number remains unknown) remain behind bars, many having been brought to trial and sentenced secretly, while many others were sent by the police, without any trial at all, for up to three years of administrative detention (so-called "reeducation through labor"). Others continue to languish, long over the lawful time-limits for pretrial detention, in police lockups and local detention centers, their cases as yet unresolved.

The identities of most of those detained after June 4, 1989 were either never publicly reported by the authorities, or were reported without follow-up, so there is no indication of their fate. In effect, China has a major "disappearance" problem. In addition, further well-documented instances of gross brutality toward detainees, extending from

beatings to outright torture, were recorded throughout the year, contributing to a picture of generalized and often random state violence toward those in custody.

Also indicative of the authorities' undiminished hard-line stance in 1991 was their harsh treatment of all those who dared to continue pro-democracy activities, of necessity in secrecy, well after Beijing's "quelling of the counter-revolutionary rebellion" of June 1989. A clear though unstated official policy of sentencing such people harshly emerged in the course of the year.

Even for the several dozen pro-democracy activists who were released from prison in 1991, persecution and harassment did not come to an end. Most were left without jobs or income; many found themselves in broken health as a result of their harsh conditions of incarceration, while others were simply stripped of their urban residence permits and deported to the countryside. Discriminated against and often placed under near-constant surveillance, there seemed little opportunity for them to begin rebuilding their lives.

Religious activities were further curtailed in 1991, with a fresh round of repression against Catholic priests who refused to renounce their allegiance to the Vatican and against leaders and participants of unofficial Protestant "house congregations." For example, an internal government directive on religious policy, issued in February, ordered a severe crackdown on all unauthorized religious groups, whether Christian, Buddhist or Muslim, and instructed security forces "to attack the use of religion for unlawful and criminal purposes and to firmly resist the infiltration of foreign religious inimical forces."¹⁷

Government attempts to silence dissident or nationalist voices among China's main ethnic minorities also intensified. The list of Buddhist monks, nuns and others imprisoned for espousing the independence of Tibet continued to grow, amid mounting evidence of the widespread use by security forces in the region of brutal and often extreme forms of torture against such detainees.

The authorities in May declared an "anti-separatist" war on another ethnic front, by launching a nationwide crackdown against Mongol academics, students and government cadres in Inner Mongolia who had sought legal registration of their newly founded ethnic study groups.

¹⁷ "Crackdown on 'illegal' churches," *South China Morning Post*, November 13, 1991.

Finally, freedom of expression was further reined in during 1991, with tightened censorship controls and escalating attacks on independent-minded academics and students. Such measures proceeded in tandem with a mounting official propaganda blitz against so-called "peaceful evolution" — the code word for an alleged long-term plot by Western nations to undermine Chinese socialism from within by "smuggling" into China concepts of democracy, pluralism and freedom. In the course of this campaign, internal government documents designated the United States an "enemy" nation. Correspondingly, punitive action — including expulsion from the country — was taken against Western journalists, writers and others deemed to be the bearers of the "peaceful evolution" virus.

Trials of the "black hands"

The trials of several dozen leaders of the April-June 1989 pro-democracy movement took place during January and February 1991, under cover of China's "cooperation" in the U.S.-led military action in the Persian Gulf, when international scrutiny was effectively diverted from events in Beijing. Aside from the spurious — and entirely political — nature of the "counterrevolutionary" charges laid against the principal accused, the trials themselves were invalid even under Chinese law, since the defendants had all been held long in excess of the maximum five and a half months of pretrial detention allowed by the 1980 Criminal Procedure Law.

The trials showed all the hallmarks of China's criminal justice: there was no presumption of innocence; the defendants were denied all access to defense counsel until only days before their trials; lawyers were specifically barred from entering "not guilty" pleas on behalf of their clients (although in a number of highly honorable exceptions defense lawyers still presented spirited cases arguing innocence); requests to cross-examine prosecution witnesses and summon for questioning absent providers of testimonials for the prosecution were flatly denied; and official media reports, appearing well in advance of the trials, showed that guilt had been entirely predetermined by the political authorities and that the court hearings represented no more than the so-called "verdict first, trial second" scenario that has been increasingly condemned by the legal establishment itself in recent years.

Student leader Liu Gang, one of four alleged prominent "black hands" behind the 1989 protests, declared at his trial that all statements

made by him in pretrial custody should be discounted, since they had been extracted by interrogators who had repeatedly threatened him with death should he fail to comply.

Moreover, these ostensibly "open" trials were shrouded in secrecy, to the extent that in at least one reported case, that of veteran human rights campaigner Ren Wanding, even the accused's wife was not informed of the trial in advance and so could not attend. (Ren received a seven-year prison sentence for "counterrevolutionary propaganda and incitement.") All foreign observers were barred from attending, in accordance with obscure internal judicial regulations that also specifically encourage Chinese law-enforcement officers knowingly to violate provisions of the Vienna Convention on Consular Relations. All requests from Asia Watch, Amnesty International and other concerned groups to attend the trials and monitor observance of due process were ignored; the members of one monitoring group from Britain that had sought access to the trials were unceremoniously expelled from the country.

Far from exhibiting the "lenience" noted by some foreign commentators and claimed by the Chinese authorities themselves, the trials and sentences of early 1991 showed only the extent to which criminal justice in China is administered at the fickle whim of the Communist Party. Wang Juntao and Chen Ziming, both prominent intellectuals who were hitherto relatively unknown in the West, were unfairly singled out by the authorities as being the "chief instigators" of the 1989 protests and handed thirteen-year prison terms for counterrevolution and sedition. On the other hand, top student leader Wang Dan, well known in the West as one of the prime originators and leading strategists of the pro-democracy movement, received a "mere" four years' imprisonment. None of these peaceful advocates of democracy should ever have been arrested or brought to trial in the first place.

Moreover, the series of trials in Beijing in early 1991 were only the most visible aspect of a ruthless judicial apparatus that had been working nationwide without respite since the crackdown following the June 1989 massacre. Hundreds of reported trials of pro-democracy activists, and many others that were held in secret or simply went unrecorded by the official media, had already taken place in the provinces, and more were to follow. In particular, workers and minor functionaries, rather than students or intellectuals, continued to bear the brunt of this less visible aspect of the crackdown. Held in the worst prison conditions and stigmatized as mere "common criminals," they formed the great majority of those detained since June 1989 and have on average been handed

significantly heavier sentences. A case in point is that of Yu Zhenbin, a twenty-eight-year-old cadre from the Qinghai Provincial Archives Bureau, who was sentenced to twelve years in prison in January 1991 for allegedly organizing a "counterrevolutionary clique" during the June 1989 disturbances. A central charge against Yu was that he had written and distributed leaflets calling for a revision of the Chinese Constitution, the establishment of a new central government, and an end to one-party rule.

A second wave of trials began in late November, immediately following the visit to Beijing of U.S. Secretary of State James Baker. Among those tried were student leader Zhai Weimin who despite being on China's list of the "21 Most Wanted" after the 1989 Tiananmen protests managed to hide for almost a year. He was detained in May 1990, after the underground pro-democracy group he led, the *Democratic Front for the Salvation of China* held a secret press conference. He went on trial November 28. Eight days later, Li Minqi, the student detained on June 3, 1990 for making a speech at Beijing University on the first anniversary of the June 4 crackdown, went on trial in the Beijing Intermediate Court.

As in the previous year, there was no recorded instance in 1991 of any sentence passed on a pro-democracy activist having been quashed or even reduced after appeal to the higher courts. In addition, a further judicially sanctioned execution of a pro-democracy demonstrator — a worker named Han Weijun, who was convicted of burning a car shortly after June 4, 1989 — was carried out in March 1991, bringing the total number of such publicly announced executions to fifty.

Scope of ongoing detentions

The Asia Watch list of known pro-democracy detainees believed still held since the June 1989 crackdown has grown to well over one thousand.¹⁸ The increase is accounted for both by earlier arrests that have only recently come to our attention and by a series of new arrests in 1991. On March 26, Tao Siju, the new minister of public security, gave the lie to earlier assurances given by Chinese leaders to visiting foreign

¹⁸ This number does not include the several hundred pro-independence activists believed to be held in Tibet, nor several dozen Protestants, "unauthorized" Catholic priests, and a small but growing number of ethnic activists in Inner Mongolia and Xinjiang who are in detention.

dignitaries that the arrests and trials of Tiananmen dissidents were "basically over," when he openly declared to the National People's Congress (China's parliament) that the nationwide hunt for those placed on "wanted lists" after June 4, 1989 would continue. "Some of the wanted persons have been arrested, and some others are still at large," said Minister Tao, "We will continue the operation."¹⁹ The figure of over one thousand post-Tiananmen arrests and detentions refers only to those detainees whom Asia Watch has been able to identify by name, either from official Chinese press accounts or private sources.²⁰ However, reports in the provincial Chinese press in the summer of 1989 cited, often without individual names, numerous aggregate figures for pro-democracy detainees which sometimes went as high as several thousand for a single province. Since the authorities have never accounted for these thousands of anonymous detainees, there are firm grounds to believe that a large proportion of them remain, more than two years later, behind bars. Clear supporting evidence for this view emerged only in late 1991, when Asia Watch began to learn the identities and circumstances of several hundred previously unknown individuals, mainly workers, who are currently incarcerated in Hunan Province alone on account of their involvement in the 1989 pro-democracy movement.²¹ If extrapolated to a national level, in view of the authorities' own admission that the 1989 "turmoil" affected every province and region of China, the total of those still imprisoned since the June 1989 crackdown is likely to rise substantially.

¹⁹ *South China Morning Post*, March 27, 1991.

²⁰ In China, formal "arrest" -- signifying the prosecution's filing of charges and preparation for trial -- usually occurs only many months after a person's detention. However, since detention almost invariably leads to arrest, there is a little practical distinction between the two, so far as the detainee's lack of liberty is concerned. "Arrest" and "detention" thus are used largely interchangeably in this chapter.

²¹ The list of these Hunan detainees, together with a list of several hundred additional Tibetan prisoners -- neither of which is included in our year-end list of over one thousand Chinese political prisoners -- is scheduled for publication by Asia Watch in early 1992.

Recent arrests and trials

Despite the repressive atmosphere in China since June 1989, pro-democracy activists have continued to find ways to organize themselves and to express their defiance of the nationwide crackdown on the freedoms of expression and association. However, the authorities have dealt even more severely with such persons, when they can find them, than with those detained in the immediate aftermath of the 1989 crackdown. At least four groups engaged in peaceful underground resistance activities are known to have been smashed, and their leaders arrested, in 1991.

In one case, the two "principal ringleaders" of the dissident group — former graduate students at Qinghua University named Chen Yanbin and Zhang Yafei — were tried in Beijing on March 5, 1991 and given prison sentences of fifteen and eleven years. The verdict conveyed the flavor of the ongoing official assault on free speech in China today:

In February and March 1990, the defendants Chen Yanbin and Zhang Yafei, working in collusion, drafted the reactionary journal *Tieliu* (*Iron Current*), which attacked and slandered the leadership of the Chinese Communist Party as being 'an authoritarian tyranny,' the Chinese state as a 'forty-year-old authoritarian empire,' and socialism as 'a great disaster and retrogression of mankind in the twentieth century, and China's pitfall and calamity.' It incited the masses to overthrow the political power of the people's democratic dictatorship and the socialist system, and to wage a 'struggle to the death' against the Chinese Communist Party. Later, the defendants went to Shuangfeng County, Hunan Province, where they mimeographed over four hundred copies of the reactionary journal *Tieliu*. Chen Yanbin brought them to Beijing and, together with Zhang Donghui and others (prosecuted separately), distributed them in residential areas, on university campuses and in buses.

The verdict added that the three accused (together with four others who were prosecuted separately) had formed a "counterrevolutionary" organization named the Chinese Revolutionary Democratic Front, and had "drawn up a reactionary political program with the abolition of the Four Cardinal Principles as its central content." As the charges

demonstrate, the two graduate students and their five colleagues were accused of no more than independently publishing a political journal and trying to organize a peaceful, though necessarily clandestine, pro-democracy organization. No allegations of engaging in violent activity were brought against the group. The verdict of the court, however, was never in doubt.

The second pro-democracy group known to have been broken up by the authorities in 1991 was the Study Group on Human Rights Issues in China, a small organization set up by intellectuals in Shanghai in late 1990 or early 1991. It was reportedly led by Gu Bin, a twenty-six-year-old student at the Shanghai Chemical Industry Special School, and Yang Zhou, a fifty-year-old intellectual who participated in the 1979-1981 Democracy Wall movement and served three years in prison in connection with the Wei Jingsheng case from that era. In July 1990, Yang Zhou sent a letter by registered mail to Party General-Secretary Jiang Zemin, calling for the release of all political prisoners, the creation of a multiparty system, the right to register new political parties, respect for freedom of speech, and an end to the practice of labeling dissidents as counterrevolutionaries. Soon after its formation, the Study Group on Human Rights Issues in China mimeographed Yang's letter as a flyer and privately circulated it among colleagues and acquaintances. The group reportedly had plans to publish a regular newsletter carrying articles on human rights issues which had appeared in the Hong Kong press, but it is not known whether this project ever got off the ground.

The group — the first human rights organization known to have been formed since June 5, 1989, when a group named the Committee to Protect Human Rights in China briefly emerged in Beijing to protest the military crackdown — was smashed in its infancy. On April 5 and 18, 1991, Gu Bin and Yang Zhou were secretly arrested. Both are still being held incommunicado in Shanghai. Up to eight other members of the group were also detained in mid-April, but are thought to have later been released.

In a third case, Liu Xianbin, a young student at the prestigious People's University in Beijing, was secretly arrested by the authorities sometime during April 1991. Like Chen Yanbin and Zhang Yafei and the members of the Shanghai human rights group, Liu's "crime" was apparently that he had tried to publish a dissident magazine on his college campus. So far, no further information about Liu's case has become available, and it is not known whether other students were arrested in connection with his dissident publishing venture.

A fourth case concerned a large pro-democracy organization in the northeastern city of Tianjin called the "89 Alliance." Eight Tianjin-based members of the one hundred-strong group, and possibly others from elsewhere in China, were arrested on March 25, 1991, after one of them was caught by the police trying to send a fax from Shenzhen to Hong Kong. The organization was set up in September 1989 by a group of Nankai University students in the hope of keeping alive the spirit of the crushed pro-democracy movement. Most of the detainees were reportedly released, but the leader of the group, a law graduate and teacher at Tianjin University named Li Baoming, was later sentenced to eighteen months' imprisonment.²²

Finally, a veteran dissident worker, Fu Shenqi, was arrested in his hometown of Shanghai in late May 1991, allegedly for possessing a mimeograph machine and publishing an underground pro-democracy journal. Formerly a worker in a Shanghai generator factory and a member of the Communist Youth League, Fu had served a four-year prison term in the early 1980s for his leading role in the Shanghai "democracy wall" movement of 1978-1981. In 1979, he founded a publication called *Voice of Democracy*, and one year later helped set up the dissident National Association of the People's Press and served as chief editor of its regular bulletin, *Responsibility*. There has been no word on Fu's fate since his latest arrest.²³

Significantly, none of the above-mentioned arrests of people involved in underground pro-democracy activities was ever publicly announced or reported in the Chinese media. Clearly, the authorities wished neither the Chinese public to know about these examples of renewed pro-democracy activity, nor the outside world to find out about the secret arrests of those involved and the suppression of their dissident groups.

²² "Tianjin reform group cracked," *South China Morning Post*, August 26, 1991. The relative leniency offered to this group may well have been due to the strong local influence in Tianjin of Li Ruihuan, the city's reform-minded former mayor who was recently promoted to a central leadership post.

²³ "Dissident Fu held by police," *South China Morning Post*, June 4, 1991.

Prison Conditions and Widespread Use of Torture

Following the June 1989 crackdown, the Chinese authorities adopted, in effect, a two-track system for incarcerating pro-democracy dissidents. A small number of well-known intellectuals and student leaders — those upon whom international attention tended to be most sharply focused — were held in relatively humane conditions and were by and large not subjected to gross ill-treatment. When released in the course of 1990, some of these detainees gave relatively favorable accounts of their conditions of imprisonment and general treatment.

However, for the vast majority of lesser-known or entirely unknown pro-democracy detainees, a very different prison regime has been the norm. In detention centers and police lockups around the country, such prisoners were — and continue to be — held in conditions of extreme overcrowding and inadequate sanitation and diet, and subjected to gross physical and psychological brutality at the hands of prison guards and other inmates. Numerous reports received by Asia Watch from political prisoners who were released in 1991 and their families confirmed these and other details, including that ill prisoners are routinely denied proper medical care; indeed, withholding such care is one means commonly used by prison officials to force "confessions."

The use of beatings and torture against prisoners became so widespread in 1991 that the central authorities have again had to appeal publicly for measures to curb it. In April, Deputy Chief Procurator Lian Guoqing reported that in the first three months of the year his department had investigated 2,900 cases of "perverting justice for bribes, extorting confessions by torture, illegal detention and neglect of duty." More than 490 of these cases had resulted in death or serious injury, he added. Around the same time, the *People's Public Security News* commented, "the method of getting evidence by extracting confessions through torture has not been entirely eradicated, and is very serious in the case of a minority of officials."²⁴ In September, the same newspaper — indulgently attributing the problem to police officers' "hazy knowledge of the law" — reported the recent case of a peasant who had been wrongfully executed after officers beat him into falsely confessing that he had

²⁴ "Paper decries use of torture," *South China Morning Post*, July 29, 1991.

mugged and raped a woman.²⁵ Finally, in November, the newspaper complained: "Some Chinese policemen take their power so much for granted that they routinely torture suspects to extract confessions."²⁶

In this and other human rights matters, the central government proved itself either unwilling or unable to control events in the provinces. When two escaped dissidents, worker-activist Li Lin and his musician brother Li Zhi, returned to their home in Hunan Province in February 1991 — after public assurances had been given by top leaders, including Party General Secretary Jiang Zemin, that overseas dissidents who ceased "illegal activities" would not be punished if they returned to China — the brothers were seized and imprisoned almost immediately. Their main inquisitor, bureau chief Deng of the Hengyang state security bureau, told one of the brothers: "Jiang Zemin's statements do not amount to much. He is only speaking for himself, not the Communist Party or the country....I am the law, I do whatever I like."²⁷ Following a successful international campaign to secure the Lis' release, they told *The New York Times* of their five months of ill-treatment:

The brothers were placed in separate jails, crammed in cells with common criminals, and the authorities urged the other inmates to beat them up. In fact, many of the criminals were far more humane than the guards....Life in prison was scarcely endurable. Li Lin had not been allowed to take warm clothes and nearly froze in the drafty, unheated cells. Meals consisted of a potato or part of a squash, and inmates were constantly hungry and malnourished. Lice and vermin and disease were part of life, and medical care was denied even to prisoners who seemed near to death....Beatings were frequent, and Li Lin said that four or five times he was tortured with an electric cattle

²⁵ "Force used to get crime evidence," *South China Morning Post*, September 12, 1991.

²⁶ *People's Public Security News*, November 15, 1991, as reported in "Policemen take torture for granted," *South China Morning Post*, November 19, 1991.

²⁷ "Stay away, say brothers," *South China Morning Post*, September 15, 1991; and "China's 'Iron Fist' may be losing its grip," *Asian Wall Street Journal*, September 27 1991.

prod until he was writhing on the ground.²⁸

Such ill-treatment is not confined to the pretrial, interrogative phase of detention. Particularly in the case of political prisoners who "stubbornly" refuse to admit guilt and abandon their dissident ways, such treatment often continues beyond the trial, sometimes even throughout the term of imprisonment. A particularly disturbing case in 1991 concerned Zhou Zhirong, a thirty-year-old middle school teacher from Xiangtan, Hunan Province, who was sentenced to five years' imprisonment for "counterrevolution" after making pro-democracy speeches during the 1989 demonstrations. Zhou was consigned to Longxi Prison and subjected, along with other political prisoners, to the notorious "strict regime" (*yanguandui*) treatment.²⁹ Zhou tried to organize the other political prisoners by convening secret discussions among them. On February 5, 1991, according to a recently escaped former prisoner familiar with the details of the case, all were consequently put in solitary confinement in the prison's "black rooms" — windowless, pitch-dark boxes of less than two square meters, where the floor was awash with fetid water and the only "bed" was a low, one-foot wide concrete platform.

But for Zhou Zhirong, the torment had scarcely begun. On February 12, he was secretly transferred to a solitary confinement unit in Provincial No. 3 Prison at Lingling, and secured hand and foot to a punishment device called the "shackle board" (*menbanliao*) — a raised, horizontal wooden structure the size of a door, equipped with shackles at the four corners and a hole at the lower end for bodily functions. He was held, without respite, on this revolting device for three full months. When he showed continued resistance by shouting at his jailers, a filthy rag was

²⁸ "China Dissident, Freed After West's Pressure, Still Speaks Out Despite Risk," *The New York Times*, September 22, 1991.

²⁹ The existence of these "strict regime" units is acknowledged by the authorities only in classified, internally circulated publications. One such publication, a penal officials' journal entitled *Theoretical Studies in Labor Reform and Labor Reeducation*, stated in its April 1989 issue that prisoners assigned to "strict regime" treatment receive only basic foodstuffs, may not receive visitors or letters, are subjected to physical and "disguised" physical punishment, and are forced to perform excess manual labor and receive insufficient sleeping time. In fact, conditions are far worse even than this.

stuffed in his mouth, to be removed only at feeding times. According to Asia Watch's informant, Zhou had become severely psychiatrically disturbed by the time he was removed from the "shackle board" in May 1991.

Another example of severe prisoner abuse came to light one week before U.S. Secretary of State James Baker's visit to Beijing in November, when six prominent dissidents in Liaoning Province, currently serving sentences ranging from four to twenty years on account of "counterrevolutionary" involvement in the 1989 pro-democracy movement, announced their intention to begin a hunger strike on November 15, declaring that they could "no longer bear the Chinese Communists' persecution and torture."³⁰ In a statement issued by friends and relatives in Beijing, the condition of the six dissidents — all of whom were undergoing "strict regime" treatment in a labor camp known outwardly as the Lingyuan General Car Factory Disciplinary Brigade — was described as follows:

Every day they are forced to work for fourteen hours. The prison authorities assigned them extremely heavy work quotas, and they are viciously beaten if they fail to meet these. The same happens if they refuse to say things contrary to their consciences during 'political examination' sessions. In fact, the prison wardens beat and curse them at will — punching and kicking them or assaulting them with electric batons and leather belts. Many prisoners have already suffered injuries in this way. Prison warden Yang Guoping, his assistant Kiao Lie and other Communist Party thugs and henchmen subject them to degrading treatment and instigate the 'convict heads and cell bosses' [i.e., other prisoners] to persecute them.

Sanitation and medical facilities in the prison are utterly foul and deficient, and inmates are never given proper medical treatment when they fall ill. More than forty prisoners at a time

³⁰ The six dissidents (and their prison sentences) are: Beijing student leaders Liu Gang (six years) and Zhang Ming (four years); and independent labor activists Tang Yuanjuan (twenty years), Li Wei (thirteen years), Leng Wanbao (eight years) and Kong Xianfeng (three years). See "Hunger Strike by activists for Baker visit," *South China Morning Post*, November 7, 1991. Quoted extracts above are from a copy of the full hunger-strike appeal obtained by Asia Watch.

are crammed into cells measuring just over twenty square meters.

After a whole day's exhausting labor, all that they are given to keep themselves alive is a corn-flour bun and some vegetable soup. Needless to say, they are not allowed to read anything or do any writing, and the guards strip them of their right to receive letters on the slightest of pretexts. The authorities are pursuing a 'total assault' policy against these political prisoners, aimed deliberately at breaking them physically, spiritually and morally.

After news of the impending hunger strike was reported internationally, the authorities issued angry denials and closed off all channels of further information on the condition of the six dissidents held at Lingyuan. But in December, Asia Watch learned that Liu Gang, one of the student leaders serving a six-year sentence at Lingyuan, refused to submit to forced feeding and was beaten so badly his arm was broken. No further details were available on his condition or that of the other hunger-strikers.

Persecution and harassment of released dissidents

Pro-democracy activists released from prison in the course of 1991 continued, like their counterparts of the year before, to suffer a wide range of government-imposed punishments, restrictions and petty harassments. These may include: loss of employment, income and housing; surveillance by public security authorities; expulsion from school or college; restrictions on traveling (including being forbidden to leave China for study in the United States); frequent mandatory reporting to security officials; and compulsory transfer of household registration (*hukou*) to a small town or the countryside.

In addition, many released dissidents return home in poor or broken health, typically suffering from tuberculosis, skin diseases, malnutrition and, in some cases, damaged organs from beatings received in prison. Medical treatment in the cases known to Asia Watch was poor or nonexistent. When hospitalization was required, families themselves had to bear the costs — sometimes while their relatives were still imprisoned, and always after they were released — even if their medical condition was directly related to their imprisonment.

Repression of religious dissidents

In the course of the Party's intensified drive in 1991 to muzzle and intimidate all alternative sources of authority in society, several dozen more Catholic priests and believers who refused to renounce their allegiance to the Vatican, together with an unknown number of unofficial Protestant and Buddhist worshippers, were rounded up and imprisoned.

This latest crackdown against unofficial religious groups was first announced by the authorities in a directive in February. According to the document: "The public security department at all levels...must resolutely attack those counterrevolutionaries and others who make use of religion to carry out destructive activities." Moreover, the security forces were urged "to firmly resist the infiltration of foreign religious inimical forces." The message was reinforced in November, when Tao Siju, minister of public security, stated that the security forces would make the crushing of illegal underground organizations, including religious units, their priority.³¹

In mid-September, two-thousand Protestants worshipping in a "house church" on the outskirts of Wenzhou, Zhejiang Province, were reportedly dispersed by a large contingent of police, some of whom fired shots into the air. Several preachers were beaten and detained, though later released. In subsequent weeks, missionary sources in Hong Kong reported that large-scale arrests of activists of underground churches had taken place in the provinces of Zhejiang, Anhui, Jiangsu and Henan and in the cities of Shanghai, Guangzhou and Shenzhen.³²

On June 11, Bishop Joseph Fan Zhongliang, 75, was arrested and held for five weeks, apparently in an act of official retaliation for Pope John Paul II's appointment shortly before of another dissident Catholic leader, Ignatius Gong Pinmei, now 90, to the level of cardinal. Bishop Fan had earlier spent fifteen years (1967-1982) in a forced labor camp in

³¹ Associated Press, November 12, 1991; see also "Crackdown on 'illegal churches,'" *South China Morning Post*, November 13, 1991.

³² "Crackdown on 'illegal churches,'" *South China Morning Post*, November 13, 1991.

Qinghai Province.³³ In July 1991, an Italian priest, Father Ciro Biondi, was expelled from China, also in apparent retaliation for the appointment of Cardinal Gong.³⁴

In September, the Rome-based church publication *Asia News* reported that eight bishops in Hebei Province had been detained in the previous seven months and sent to political reeducation camps, and the authorities had opened another such camp for bishops and priests in Shaanxi Province. In addition, the journal reported, fifteen more priests had been arrested in July in Fujian Province.³⁵ In December, a spokesman for the official Chinese Catholic Patriotic Association accused underground priests and bishops appointed by the Pope of "spreading heresy" and confirmed that a number of them had been arrested after holding a secret episcopal conference in northwest China in November 1990. The spokesman added that those arrested were "guilty of founding an illegal organization," but denied any connection between this and the detainees' religious beliefs.³⁶

In October, public security authorities in Shanghai arrested at least five Chinese Jehovah's Witnesses, and expelled an Australian businessman who had been holding secret Bible-reading sessions with them. The authorities told the businessman that other foreigners involved in religious activities would also be expelled soon.³⁷

³³ "Bishop, 75, arrested in retaliation against Pope," *Hong Kong Standard*, June 21, 1991. Gong Pinmei had spent thirty years in prison, from 1955 onward, but in 1988 was allowed to move to the United States, where he now lives.

³⁴ "Priest expelled as protest," *Hong Kong Standard*, July 5, 1991.

³⁵ "Catholic repression worsening: claim," *South China Morning Post*, September 14, 1991.

³⁶ "Catholic priests accused of heresy," *South China Morning Post*, December 17, 1991.

³⁷ "Jehovah's Witnesses held," *South China Morning Post*, November 8, 1991.

Repression of ethnic minorities

Repression continued in Tibet with more arrests of Tibetans for participating in peaceful demonstrations both in the Tibetan Autonomous Region (TAR) and the Tibetan regions of Gansu and Qinghai provinces. New information emerged about trials of Tibetan dissidents which were notable chiefly for their lack of fairness and for the heavy sentences handed down for nonviolent political activities. Prison conditions were harsh, and efforts by prisoners to protest those conditions led to severe punishment. The Chinese government permitted several international delegations to have access to Tibet to discuss human rights, among other issues, but the visits took place under tightly controlled conditions.

Numerous demonstrations in support of independence took place in Lhasa, the capital of the Tibetan Autonomous Region, and in a Tibetan region of Qinghai. On March 17, at least five monks from Dhing-gar, a monastery in the Toelung area of Lhasa, were detained for taking part in a pro-independence demonstration in the Barkhor, the square in front of the Jokhang, Lhasa's most important temple. Also in March, four monks from Drepung, the largest monastery in Tibet, were detained for political activities that included putting up pro-independence posters on the monastery walls. Dozens of small demonstrations took place in Tibet after the Chinese government's commemoration on May 23 of the fortieth anniversary of Tibet's "liberation" in 1951. In August, a monk and a nun were detained for peacefully demonstrating in the Barkhor. On September 14, six people, including five monks, were taken into custody for unfurling the Tibetan flag in the Barkhor. One of the six died three days later, of head injuries. Lhasa sources said they were promised an investigation by local authorities.

New information surfaced about trials, both those that took place in 1991 and one in 1990. In July 1991, documents concerning the December 24, 1990 trial of a human rights activist were smuggled out of Tibet. Jampa Ngodrup, 45, a doctor in Chengguan Qu Municipal Clinic in Lhasa, was detained on October 20, 1989 and formally arrested on August 13, 1990. He was accused of having, at the end of 1988, arranged for a colleague to collect a list of all those arrested during the March 5, 1988 demonstrations in Lhasa. He then allegedly passed the list to a Tibetan woman whom the trial documents describe as a "foreign resident." The woman, in turn, gave Jampa Ngodrup a list of those injured and arrested in the December 10, 1988 protests, which he copied. He was accused of being a foreign agent and sentenced to thirteen years

in prison.

On February 8, two men named Tseten Norgye and Thubten Tsering, and a woman named Sonam Choedron were tried on charges of spreading counterrevolutionary propaganda. Tseten Norgye had been detained on April 20, 1989 for distributing a document calling on Tibetans to support independence and the Five Point Proposal of the Dalai Lama. He was formally arrested on November 10, 1989 and, after a one-day trial, was sentenced to four years in prison. Thubten Tsering, a member of the Communist Party, was sentenced to five years in prison, and Sonam Choedron to two. She was released in April. There were reports from Tibetan sources in early November 1989 that Tseten Norgye had been tortured.

The most telling evidence of poor conditions in prisons came on March 31, when two prisoners in TAR Prison No. 1, in Drapchi, Lhasa, tried to hand visiting U.S. Ambassador James Lilley a petition about mistreatment and torture of prisoners. Prison officials grabbed the petition out of Lilley's hand and refused to give it back. The two prisoners, Lobsang Tenzin and Tenpa Wangdrak, together with three other men, were put in solitary confinement in Drapchi, then transferred on April 27 to a labor reform camp in Nyingtri, three hundred kilometers east of Lhasa, and the next day reportedly transferred again to a small prison in Damchu. Tibetan sources say they were moved back to Lhasa on July 27; Asia Watch was told by officers of the Bureau of Labor Reform in the Tibetan Autonomous Region in early August that they were still in Nyingtri.

A series of protests over the transfers held by other political prisoners in Drapchi resulted in widespread beatings of the protestors and other punishments.

In December 1991, Tibetan sources reported that Sonam Wangdu, a thirty-six-year-old prisoner arrested for involvement in the killing of a policeman during the demonstrations in Lhasa on March 5, 1988, was near death, without medical treatment, in Drapchi prison.

At least three international delegations visited Tibet during the year to discuss the human rights situation. An Australian government delegation ended a thirteen-day visit to China and Tibet on July 26; despite repeated requests, it was not able to get access to Drapchi prison, although it was given specific information about a dozen Tibetan prisoners. A delegation under the auspices of the National Committee on U.S.-China Relations, in which Asia Watch took part, visited Tibet between July 31 and August 8. The group did gain access to Drapchi, but

virtually all male prisoners had been removed from their cells before the visit. Two women prisoners with whom members of the group had a chance to speak briefly — in the company of prison officials — were both nuns, serving time for taking part in political demonstrations.

In recognition of continuing human rights abuses in Tibet, the first U.N. resolution on Tibet in twenty-five years was passed on August 23 by the U.N. Subcommittee on the Prevention of Discrimination and the Protection of Minorities. It said that human rights violations "threaten the distinct cultural, religious and national identity of the Tibetan people."

Unrest continued in Xinjiang, the northwestern frontier province inhabited mainly by Muslim ethnic groups, following the April 1990 Baren uprising. The protest was suppressed by the PLA with the loss of several dozen Muslim lives.

In July 1991, the Hong Kong magazine *Zheng Ming* (*Contention*) reported that during the previous two months a series of armed rebellions seeking independence, the localization of military forces and the right to organize political parties had broken out in remote areas of Xinjiang bordering the Soviet Union. The magazine stated that for thirty-six hours in mid-May, government buildings in Tacheng city were occupied by armed crowds and demands were made for a transfer of power; official reports were cited to say that 140 "armed bandits" had been killed, wounded or arrested in the subsequent army crackdown. In addition, *Zheng Ming* reported that on June 11, three thousands demonstrators gathered before the government headquarters in Bole city demanding the democratic election of city leaders; when violence erupted the next day, locally stationed troops were sent in and up to five hundred demonstrators were reportedly killed or wounded. Both areas were subsequently closed off to foreigners, and martial law was imposed in the Bole area.³⁸ Asia Watch is concerned that the authorities appear to have used grossly excessive force in dealing with these incidents of ethnic unrest and that a considerable number of those killed or injured may actually have been peaceful demonstrators.

In November, the official *Xinjiang Daily* reported that five local men had been sentenced to between one and three years' imprisonment for organizing a protest demonstration by taxi drivers in Urumqi, the regional capital. The newspaper said that the demonstration had begun

³⁸ "Xinjiang fasheng wuzhuang baodong," *Zheng Ming*, July 1991, as reported in Federal Broadcast Information Service, July 3, 1991.

over a dispute about how much of their fares the drivers should be required to hand over to the city authorities, but this was just "an excuse," it claimed. The report contained no allegations of violence by the demonstrators, and it appears that the five were imprisoned solely for exercising their right to freedom of expression and assembly.³⁹

The year 1991 also saw a severe new round of repression in China's third major ethnic region, Inner Mongolia. The central authorities in 1981 officially designated the region as having suffered among the heaviest fatalities and worst persecution of any part of the country during the Cultural Revolution.

On May 11, the Party Committee of the Inner Mongolian Autonomous Region issued top-secret "Document No. 13" banning and ordering a major crackdown on two small unofficial organizations which had been recently formed by ethnic Mongol intellectuals and cadres in the region. The organizations were called the Ih Ju League National Culture Society and the Bayannur League National Modernization Society. On May 15, Huchuntegus and Wang Manlai, two leaders of the Ih Ju League, were arrested, and twenty-six other members of the society's provisional council were placed under house arrest. According to an appeal issued on June 30 by an underground dissident group called the Inner Mongolian League for the Defense of Human Rights, the authorities later moved the two to a secret prison facility in Hohhot, the regional capital, used to hold important political prisoners and administered by Section No. 5 of the provincial Public Security Department. The men's wives reportedly have been subjected to regular harassment, and have not been allowed to visit their husbands or informed of their place of detention. Before their arrest, Wang Manglai and Huchuntegus were employed as officials at the Ih Ju League's Office of Education.

The dissident appeal said that another leader of the unofficial association, Sechinbayar, a research fellow at the Ih Ju League's Ghengis Khan Research Center, and others from the group of twenty-six placed under house arrest had been summoned frequently for interrogation and subjected to intimidation, insults and corporal punishment to force them to confess. The authorities reportedly indicated that some of the twenty-six would later be formally arrested, probably eight of the more active

³⁹ Reuters, "Sentence of hard labor for protest," *South China Morning Post*, November 6, 1991.

ones including Sechinbayar.

Fewer details have emerged of the crackdown against the Bayannur League National Modernization Society, probably because it was based in a more remote and inaccessible part of the region, bordering the Soviet Union. However, the June 30 appeal reported that the society's leader, Baoyintaoktao, had been secretly tried (the length of the sentence given is not known) and incarcerated in the same secret prison in Hohhot as the two leaders of the Ih Ju society. It added that seven other members of the Bayannur dissident group had been escorted by public security authorities to a detention facility in the league's Linhe municipality, and that nothing further had been heard of them. Moreover, the appeal stated that following protests held in Hohhot and other parts of Inner Mongolia to commemorate the second anniversary of the June 4, 1989 massacre in Beijing, a journalism sophomore at the University of Inner Mongolia, an ethnic Mongol named Zhang Haiquan, had been arrested and was being held incommunicado in an unknown location.

In October, *Radio France Internationale* reported that Ulan Chovo (Wulan Sabu in Chinese), a thirty-seven-year-old professor of history at the University of Inner Mongolia, had been arrested on July 11 on charges of giving documents concerning human rights violations in the region to a foreigner. Ulan Chovo is thought to have been one of the leaders of the Ih Ju League National Culture Society; according to an Asia Watch source, he too has been incarcerated in a secret prison in Hohhot. The allegations of passing documents to a foreigner may well refer to the above-cited top-secret Party Document No. 13 and the June 30 appeal by the Inner Mongolian League for the Defense for Human Rights. In August, a Beijing-based journalist for *The Independent* of London, Andrew Higgins, was expelled from China, having earlier been caught in possession of these documents. In July, the full text of the documents was published in English translation by Asia Watch. (However, neither Higgins nor Asia Watch had obtained the documents directly or indirectly from Ulan Chovo.)

Two other ethnic Mongol dissidents known to be imprisoned in Inner Mongolia on account of their peaceful exercise of the right to free expression are Bater, 35, formerly an official in the government planning commission of Xilingol league,⁴⁰ and Bao Hongguang, also 35, an engineer. Both men were leaders of a large student protest movement in

⁴⁰ A league is an administrative district in Inner Mongolia.

1981 against Han domination of the Inner Mongolian Region. In the summer of 1987, the two escaped across the border to the Mongolian People's Republic and sought political asylum there, but were later extradited to China and each sentenced to eight years in prison.⁴¹

The Right to Monitor

Even as the Chinese government sent delegations, including one from the Institute of Law of the Chinese Academy of Social Sciences, to the United States to discuss human rights with American human rights organizations and members of Congress, independent human rights monitoring remained illegal in China and Tibet. As mentioned above, an organization called The Study Group on Human Rights Issues in China, formed in early 1991 in Shanghai by a student named Gu Bin and a veteran dissident, Yang Zhou, was smashed in April when Gu and Yang were arrested.

In June, Asia Watch received several documents from an underground organization in Inner Mongolia called the Inner Mongolian League for the Defense of Human Rights, formed to protest the intimidation of Mongolian intellectuals and, specifically, the imprisonment of two men who tried to form groups to promote Mongolian culture. Nothing more is known about the League.

Hou Xiaotian, wife of dissident Wang Juntao, and other individuals were fearless in protesting violations of human rights, but any effort to form a monitoring organization in China would have landed them in jail.

In Tibet, collecting the names of imprisoned pro-independence activists and passing them on to foreigners was considered tantamount to espionage, as could be seen from the trial of Jampa Ngodrup described above.

China did not permit international human rights monitoring groups as such to conduct fact-finding missions in China or Tibet, but it granted Asia Watch's executive director an official visa to take part in a study group on Tibet in August, which discussed human rights issues with senior government officials and visited Drapchi prison in Lhasa.

⁴¹ For more details, see Asia Watch, "Crackdown in Inner Mongolia," July 1991, and Asia Watch, "Crackdown in Inner Mongolia, (Update No. 1)," December 1991.

U.S. Policy

China's dismal human rights prognosis in 1991 was a persistent indictment of President Bush's approach toward that country. Once again, President Bush continued to shelter China from the congressional threat to enact significant economic sanctions, and the State Department did its best to smooth the disruptions in U.S.-China relations caused by Beijing's recalcitrance on human rights.

The president himself bears responsibility for a policy that has become increasingly discredited. It is widely understood that President Bush, a former U.S. ambassador to China, sets the agenda on China as for no other country in the world. (State Department critics label President Bush the Department's "China desk officer," implying that the president is personally involved in the smallest details of U.S.-China relations.) There has been no letup in sharp congressional criticism of this policy in light of the meager fruit it has borne.

The significance of the president's extraordinary personal identification with the Chinese leadership cannot be overstated. It signals to the repressive regime that it has nothing to fear from the United States, no matter how much criticism it receives from other quarters.

President Bush articulated his views about U.S.-China relations at a speech on May 27 at Yale University. He attacked critics of his China policy, stating: "Some argue that a nation as moral and just as ours should not taint itself by dealing with nations less moral, less just. But this counsel offers up self-righteousness draped in a false morality. You do not reform a world by ignoring it." He went on to characterize the opposition to continuing Most Favored Nation (MFN) trading status as "not moral."⁴²

⁴² Most Favored Nation trading status is the term used to designate normal trade relations with the United States. Communist countries are prohibited by U.S. law from receiving MFN status unless the president waives the provisions of the law on an annual basis. Since the Beijing massacre of June 1989, the MFN renewal process has become increasingly controversial in the U.S. Congress. Legislation placing human rights conditions on MFN for China passed the House of Representatives by an overwhelming margin in 1990, but languished in the Senate. Accordingly, MFN was maintained for Chinese export to the United States throughout 1990 and 1991.

This policy [MFN for China] has generated considerable controversy. Some critics have said revoke MFN or endanger it with sweeping conditions — to censure China, cut our ties and isolate them. We are told this is a principled policy, a moral thing to do. This advice is not new, it's not wise, it is not in the best interest of our country, the United States, and in the end, in spite of noble and best intentions, it is not moral.

Throughout the MFN debate, Administration officials consistently made the argument that a policy of constructive engagement with China had the best chance of success in promoting reforms and human rights improvements. This argument had two dimensions: first, the belief that the U.S.-China trade made possible by MFN status provides a framework for discussing human rights and other issues of concern to the United States; and second, the view that withdrawing MFN would lead to the isolation of those in China seeking to liberalize the society, particularly in the market-oriented coastal provinces. The Administration refused to consider the likelihood that China's hard-liners would accommodate to any conditions placed on MFN — beyond those already contained in the Jackson-Vanik provision — rather than risk losing the huge economic and political benefits of MFN. Thus the White House and State Department labeled any new conditions on MFN as tantamount to eventual withdrawal of the trade status.

Critics of the president's policy, on the other hand, maintained that constructive engagement, combined with the lifting of most of the most important sanctions imposed against China after June 1989, had not produced significant human rights improvements. They argued that China's leaders would respond only to a combination of diplomatic and economic pressure, and that providing MFN unconditionally simply strengthened the hand of the hard-liners. Beijing's ideologues could essentially have it both ways, pursuing a policy of "openness" to the West to acquire badly needed Western trade and investment, while at the same time maintaining a policy of harsh repression. Human rights advocates pointed to conditions on MFN as the most effective way to link China's domestic behavior with its international economic performance. A package of flexible, measurable human rights conditions on MFN in 1992 would give the Bush Administration and the Chinese government a powerful incentive to work towards concrete human rights improvements.

The president's personal involvement in setting China policy and his assault on his critics successfully deterred Congress from adopting

legislative alternatives in 1991, notwithstanding the unpopularity of current policy with both Democratic and Republican legislators, although the MFN issue remained unresolved at year's end.

In early 1991, there were some signs that the Administration might be using the threat of withdrawing MFN to encourage human rights progress. On May 5, Robert Kimmitt, the under secretary of state for political affairs, visited China for discussions about a variety of U.S. concerns, including trade, human rights and nuclear proliferation. Secretary Kimmitt reported that he had called upon the Chinese to issue an amnesty for those who engage in "non-violent political acts." He explained: "I made it clear that a decision on MFN would be made in the political context of concerns about human rights, nonproliferation and trade, and that prospects of renewal of MFN would be improved by progress in these areas."⁴³

Kimmit's visit was preceded in March by a trip to Beijing by Assistant Secretary of State for East Asian and Pacific Affairs Richard Solomon. Secretary Solomon said that a "dialogue" was continuing with Chinese security officials regarding the cases of 150 dissidents. "We feel we've institutionalized the dialogue" which had been underway since the previous December. "That is in my view a breakthrough," he asserted.⁴⁴

Hopes that the Administration would use the MFN debate to extract major human rights concessions were dashed when the White House and the State Department made it clear that they opposed even the mildest conditions on MFN for China when Congress begin deliberations on the issue in June. On July 11, the House passed legislation attaching strict human rights conditions to MFN by a lopsided 313-to-112 margin. The Senate's version of the bill placed not only human rights conditions on MFN but also conditions relating to China's nuclear proliferation and trade policy. Having lost badly in the House, White House officials and President Bush himself lobbied many senators, persuading enough of them to back unconditional MFN that his expected veto was sure to be upheld. The vote, on July 23, was fifty-five to forty-four in favor of the conditions bill — twelve short of the sixty-seven votes needed to override a veto by a two-thirds majority. Stating that "we are very pleased with the

⁴³ Kathy Wilhelm, Associated Press, "US Envoy Talks with Chinese on Human Rights, Trade," May 7, 1991.

⁴⁴ United Press International, March 12, 1991.

vote," Marlin Fitzwater, the White House spokesman, added, "the president has said that he will veto this bill, and he will."

In October, a House-Senate conference was convened to reconcile the two bills and issue a "conference report" for final adoption by Congress. On November 26, the House passed the conference bill by an overwhelming vote of 409 to 21. The bill imposes nonwaivable human rights conditions on MFN — notably the release of citizens imprisoned as a result of nonviolent expression of their political beliefs in connection with the Tiananmen Square and post-Tiananmen repression, as well as a full accounting of those detained, accused or sentenced for such expression. The legislation also spells out several "human rights objectives" on which there must be overall progress for the president to extend MFN when it next comes up for renewal in June 1992.

The strong bipartisan consensus behind the bill in the House — a substantially larger margin than the vote on the original legislation — was fueled by congressional disappointment over the meager outcome of Secretary of State James Baker's visit to China the week before. The Senate is not expected to take up the conference bill until it reconvenes in January 1992.

The president's ability to override a legislative challenge to his China policy — if he remains able to do so following the new Senate vote — is by no means evidence that the policy enjoys widespread support. Indeed, the ranks of those disgruntled with China grew even larger in 1991, due to new revelations about a category of abuses that had previously escaped close scrutiny. Asia Watch released in April secret Chinese government documents describing a policy of exporting prison-made goods to the United States, which confirmed what many had long suspected: the Chinese authorities are using the forced labor of over a million prisoners in the Chinese gulag to bolster their export economy. The official documents made it plain that China's central leadership was not only aware of the practice but was actively promoting such exports to the United States, in contravention of U.S. law.⁴⁵

The question of prison labor in China became a major human rights issue in 1991 for several reasons. First, many of the prisoners producing export goods are sent to the camps without any judicial hearing whatsoever and others are forced to stay on after their sentences expire.

⁴⁵ Section 307 of the 1930 Tariff Act, the so-called Smoot-Hawley Act, prohibits the importation of all prison-made goods into the United States.

Second, some of the gulag inmates are political dissidents, arrested for the crime of "counterrevolution"; the imposition of forced labor to punish persons for their political views is strictly prohibited by International Labor Organization Convention 105.⁴⁶ Third, working conditions inside these camps are reported to be poor, even dangerous, and in some cases, the prisoners get no remuneration at all.

In addition to the human rights concerns, the forced-labor controversy developed into a sort of litmus test of the Chinese government's credibility. Its repeated denials that prison goods were being exported to the United States or were a matter of Chinese government policy, despite clear evidence to the contrary, undercut Beijing's credibility in Congress at a time when the Bush Administration's China policy was predicated on good-faith dialogue and constructive engagement.

The forced-labor revelations were a key feature during the dispute between the White House and Congress over MFN for China. Indeed, the House bill included a provision requiring the Chinese to stop forced-labor exports as a precondition to maintaining MFN status.⁴⁷ In seeking to sway votes needed to sustain a veto of any legislated conditions on MFN for China, the Administration won the support of at least fifteen undecided senators by persuading them that their concerns about forced labor would be addressed by other means, namely, action by the U.S. Customs Service to bar incoming products. In a July 19 letter sent before the Senate vote on MFN to Senator Max Baucus and other undecided senators, President Bush stated:

⁴⁶ ILO Convention 105 prohibits the use of forced or compulsory labor "as a means of political coercion or education or as punishment for holding or expressing political views ideologically opposed to the established political, social or economic system."

⁴⁷ H.R. 2212 provided that MFN cannot be extended to China in 1992 until China has taken "appropriate steps to prevent the exportation of products made by prisoners and detainees assigned to labor camps, prisons, detention centers and other facilities holding detainees and has allowed U.S. officials and international humanitarian and intergovernmental organizations to inspect the places of detention suspected to be producing export goods to ensure that appropriate steps have been taken and are in effect."

The Department of State will seek to negotiate a memorandum of understanding with China on procedures for the prompt investigation of allegations that specific imports from China were produced by prison labor. Pending negotiation of this agreement, the U.S. Customs Service will deny entry to products imported from China when there is reasonable indication that the products were made by prison labor.

The president's promises on the forced-labor issue were empty: none of the promised steps was taken in the months following the Senate's MFN vote. At a hearing before the House Merchant Marine and Fishery Subcommittee on July 17, the Customs Service announced that it had not barred a single product from entering the United States.

A stunning broadcast on September 15 by CBS's "Sixty Minutes," which showed actual transactions for the export of prison-made goods to the United States and shocking footage of prisoners laboring in wretched conditions, and an extensive set of articles in *Newsweek*, jolted the Administration into its first concrete steps to restrict Chinese forced-labor exports. Beginning in October, the Customs Service acted to withhold from the U.S. market specific products mentioned in the CBS and *Newsweek* coverage, as well as others (described in detail below.) The Administration came in for particular criticism on the issue of forced labor because of the perception that the Customs Service had been dragging its feet in the pursuit of numerous leads regarding the importation of Chinese forced-labor goods.⁴⁸

At September 23 hearings before the House Foreign Affairs Subcommittee on Economic Policy and Trade, Stephen DeVaughn, acting director of the Customs Service's Office of Investigative Programs, justified his agency's lethargy by insisting that the Customs Service's regulations prohibited its agents from barring anything but specific items that can be shown to have been produced by forced labor; if the forced-labor goods are co-mingled with fungible goods made without forced labor, he claimed, the Customs Service is powerless to stop entry of any of the goods.

⁴⁸ For example, Senator Jesse Helms compiled a list of some ninety-five different commodities for which there was evidence of forced labor used in their production.

In the past, however, the Customs Service has told Congress a different story. At hearings in August 1985 before the Congressional Commission on Security and Cooperation in Europe, the Customs Service testified that "the law does not require a finding that a particular item of merchandise imported into the United States is made with forced labor, but rather that goods of a class or kind identical or very similar are made with forced labor." The regulations themselves, which have not changed, appear to permit either interpretation.⁴⁹ Because of the Bush Administration's new, narrow reading of the law, literally no products from China were excluded from the United States until political pressure reached intolerable levels after the "Sixty Minutes" revelations in September.

After months of dodging angry congressional questions, the Customs Service on October 3 announced that shipments of "Elephant Brand" monkey wrenches and other specific tools produced by three suspect tool companies in Shanghai would be withheld from release in the United States. Additional orders were issued by Customs on October 25, withholding release of all hand tools from the "Shanghai Laodong Machinery Plant" prison factory, and on October 29, blocking the importation of a particular brand of socks produced in Beijing Prison No. 1. Samples of the socks had been obtained by Representatives Frank Wolf and Christopher Smith during a visit to the prison in March and promptly delivered to Customs.

On November 1, the Customs Service learned that hand tools made with Chinese prison labor had been exported to San Diego along with a shipment of diesel engines manufactured by Yunnan Province No. 1 Prison. An order withholding the release of the engines was issued on November 14, the same day that NBC News broadcast footage of the engines being delivered to an importer in California. The news program also featured an expose of a San Francisco trade fair at which prison-labor products from Shandong Province were being openly marketed.

⁴⁹ The Reagan Administration, while conceding that the Customs Service is empowered to block importation of entire categories of goods, did not actually take such action. The goods in question at the time of the 1985 hearings were items produced by prisoners in the Soviet Union. According to the September 23, 1991 testimony to Congress of William Van Rabb, the commissioner of Customs from 1981 to 1989, he had reached a decision to ban entire categories of Soviet exports but was overruled by the Reagan White House.

And on December 2, Customs agents conducted a raid on a plant in Hastings, Michigan, confiscating machine presses made in a Chinese prison and business documents that Customs says prove the company was knowingly importing prison-made goods.⁵⁰

Although these specific actions by Customs were welcome, its continuing refusal to ban categories of goods when some goods among them are known to be produced with prison labor assures that vast quantities of prison-made goods will continue to be imported into the United States, given China's secrecy about its prison factories.

The Administration's practice of taking only limited steps to block forced-labor imports mirrors its approach to sanctions generally. In his July letter to the Senate, President Bush stated, "I have kept in place a number of sanctions since the Tiananmen Square crackdown which have affected arms sales, high-level contacts, U.S. economic programs and U.S. support for multilateral development bank loans to China." In fact, by 1991 there was almost nothing left of these sanctions, which the Administration had been circumventing or diluting almost since they were imposed. In the case of the ban on military sales, for example, the Administration stopped some sales but approved others, including satellites and high-speed computers. Meanwhile, the Administration continued its policy of abstaining on loans to China by the World Bank and Asian Development Bank that did not meet basic human needs but, according to informed sources, did nothing to prevent such loans from coming up for consideration, and thus effectively allowed the multilateral development banks gradually to resume normal lending to China.⁵¹

⁵⁰ The raid on E.W. Bliss Co. came about because of a tip from a competing company. The Customs affidavit seeking a search warrant stated that Bliss officials had visited the prison factory in China and seen inmates at work under armed guards. If Customs can prove Bliss imported the goods knowing they were produced with prison labor, they could be subject to criminal prosecution. *Business Week*, December 23, 1991.

⁵¹ The United States abstained, and did nothing to stop votes on a series of non-basic-human-needs World Bank loans during the first six months of 1991. As reported to Congress, these were: \$168.4 million for medium-sized cities' development, on January 8; \$150 million for Shanghai industrial development, on January 29; \$131.2 million for "Key Studies Development," on February 26; \$70 million for Liaoning Urban Infrastructure, on March 21; and \$153.6 million for Jiangsu Provincial Transport, on April 9. The United States voted for a \$335

Early in 1991, the Administration commented on the harsh prison sentences given to prominent pro-democracy dissidents, and said that it had tried unsuccessfully to obtain consular access to their trials. On February 12, the State Department reacted with subdued criticism to the thirteen-year prison terms received by Wang Juntao and Chen Ziming, calling them "deeply troubling"; questioned the fairness of their trials; said that "no prison sentence imposed for nonviolent political activity can be considered lenient"; and "call[ed] on the Chinese authorities to release all other remaining detainees."

On August 1, Asia Watch sent President Bush a public letter urging his personal intervention on behalf of Wang Juntao, who had announced plans to begin a potentially life-threatening hunger strike until he received medical attention for his steadily worsening liver disease. (Wang had been held under squalid conditions in solitary confinement since April 1991 and, even at the time of his trial, was suffering from hepatitis-B). As word spread of the condition of Wang and his co-defendant, Chen Ziming, who was also in solitary confinement, there was a flurry of international media attention and appeals from Congress, addressed to both the Chinese and U.S. governments. On September 25, by unanimous consent, the U.S. Senate passed a resolution urging President Bush to "communicate directly to the leadership of the Government of [China] the urgent concern of the Congress and American people for the lives and welfare of Wang Juntao and Chen Ziming and to call for their immediate release from prison on medical parole." Despite these appeals and the significance of the case, President Bush declined to intervene or to make a public statement about the two pro-democracy leaders that would have demonstrated his personal concern and commitment to human rights following his energetic efforts to fend off conditions on MFN for China. The State Department told Asia Watch that it had communicated with Beijing through normal channels and "expressed our

million loan for a massive agricultural-irrigation project, on June 4, claiming that it fit the Administration's loose definition of a basic-human-needs loan. At the Asian Development Bank the United States abstained on several approved project loans between January and June: \$70 million for the Shanghai-Nanpu Bridge, on May 28; \$1.7 million for economic reform policies, infrastructure planning, and toll-bridge operations and management, the same day; \$67.5 for the Yaogu-Maoming Railway, on June 20; and \$1 million for the Guangdong-Sanmao Railway, also on June 20.

strong concern to the Chinese...about Wang's deteriorating health," but that the Chinese government had denied that Wang was in poor health or on a hunger strike. The State Department said that it had urged the Chinese government to allow outside observers to visit Wang and Chen, and repeated this request in a public statement issued on August 30.⁵²

The Administration's oft-repeated claim — up until Secretary Baker's China visit in November — that the ban on high-level diplomatic contacts remained in effect, is not borne out by the record of increasing contacts in the past year. Since December 1990, four separate trips were made by high-ranking State Department officials, including Secretary Kimmitt, Undersecretary for Security Assistance, Science and Technology Reginald Bartholomew, Secretary Solomon, and Assistant Secretary for Human Rights and Humanitarian Affairs Richard Schifter.

On November 15 to 17, the ban on high-level contacts officially ended when Secretary Baker himself went to China, without obtaining advance concrete assurances that Beijing would make meaningful concessions on human rights. A U.S. official acknowledged that "no deal" had been made with the Chinese, and that "it is a bit of a gamble for the [U.S.-China] relationship."⁵³

As plans for Baker's visit were announced, Asia Watch revealed the existence of an official State Department list of political prisoners that had been submitted to the Chinese authorities in June. It is particularly unfortunate that Secretary Baker went to Beijing in the absence of any progress on the list. The list grew out of a trip to China by Secretary Schifter in December 1990, when he presented the authorities with an earlier version that contained the names of 150 political prisoners. The gesture, which was announced to the press, was important as an indication of the Administration's concern about human rights. In the first several months of 1991, Secretary Schifter's office took the welcome step of working with U.S.-based human rights groups to expand the list to over eight hundred detainees who were not known to have engaged in anything more than peaceful political or religious activities. In June, the expanded list was formally but quietly submitted to the Chinese

⁵² Letter to Asia Watch from Robert Perito, director of the Office of Chinese and Mongolian Affairs, August 16; and statement of Richard Boucher, State Department spokesman, August 30.

⁵³ Reuters, November 12, 1991.

government, but the Chinese blackmailed the State Department into silence for the next six months, despite the lack of any significant response from the Chinese. State Department officials told Asia Watch on several occasions that the Administration agreed to keep the list secret at the insistence of the Chinese government, which threatened to cut off the nonexistent "dialogue" on human rights if the list was made public.

Secretary Baker's visit was a huge propaganda coup for Beijing's leaders, but it produced meager results in terms of human rights. As he left Beijing, Baker acknowledged there was no "breakthrough" on human rights, and other U.S. officials were said to be "very disappointed" at China's intransigence.⁵⁴ Baker announced that the United States finally had been given an accounting of the prisoners on the eight-hundred-plus list — that is, information on who had been convicted, who was still under investigation, who had been released, and who could not be identified — but the Administration has not revealed the quality of the information or made it public.⁵⁵

Prior to the visit, Asia Watch and several members of Congress had urged Secretary Baker to arrange to meet with released dissidents in Beijing to send a visible message to the authorities and to offer moral support to those still in detention. In a calculated insult to Baker and to American concerns about human rights, the Chinese abducted two prominent dissidents, Hou Xiaotian (wife of Wang Juntao) and the journalist Dai Qing, to prevent them from attending meetings with Baker's delegation that had been arranged by the U.S. Embassy. Hou was released on November 17, just hours after Baker left China, but Dai Qing was spirited away by police and held for four days by staff of the newspaper *Guangming Daily*, until November 20. Meanwhile, on November 18, State Department spokesman Richard Boucher repeated assurances received from the Chinese Foreign Ministry that Dai Qing "had not been arrested and is free," while acknowledging that U.S.

⁵⁴ James Gerstenzang, "US Concedes It Failed to Sway China on Rights Issues," *The Los Angeles Times*, November 19, 1991.

⁵⁵ Although Asia Watch has not yet seen the Chinese government's responses, we understand that the data is limited to name lists only, with no details about dates of arrest or release, current whereabouts, or conviction status, and that in over two hundred cases the Chinese authorities claim to have no information on the person.

embassy officials had been unable to make contact with her. Boucher emphasized that assurances had been given to Baker that "any person against whom no criminal proceedings are pending will be allowed to travel abroad after completing the usual formalities." He also said that "we assume she [Dai] would qualify for a permit [to travel]" based on these assurances.⁵⁶ This guarantee was the most significant human rights concession that Baker obtained during his visit.

Access to prisoners by the International Committee of the Red Cross was also on Baker's agenda for the talks, but there was no indication of specific progress made on the issue. Similarly, on the matter of forced-labor exports, the "memorandum of understanding" first promised by President Bush in July was agreed to "in principle."⁵⁷ But Baker failed to persuade the Chinese to allow expanded U.S. or international access to prison factories and farms, although this was a crucial component of the "memorandum" and, in light of documented Chinese deception on the issue, necessary to make the agreement viable.⁵⁸ As of early December, negotiations on the memorandum were continuing.⁵⁹

One week after Baker's visit, the Chinese government announced that one prisoner would be freed and one former prisoner still facing

⁵⁶ Dai was invited to Harvard University to accept a Neiman Fellowship, but had been denied an exit permit. She was finally granted a permit on December 16.

⁵⁷ Statement by Secretary Baker, Beijing, November 17, 1991.

⁵⁸ Robert Perito, director of the Office of Chinese and Mongolian Affairs, testified at a U.S. Customs Service hearing on November 1 that the State Department had "every expectation" that it would obtain "greater access" as a result of the memorandum of understanding. He said that at the time only thirty-one of China's 680 prisons were "open to foreigners." The total figure is low because it does not include labor-reform or reeducation-through-labor facilities.

⁵⁹ Testimony by Robert Perito before the House Subcommittee on International Economic Policy and Trade, December 5, 1991: "The memorandum of understanding remains in negotiation....[Since the Secretary's visit] we have provided the Chinese with a draft. The Chinese have provided us with a counter draft. We have provided them with a proposal which melds the two drafts together....Our proposal provides for joint inspections that Americans would be allowed to engage in investigations...."

charges would be allowed to leave the country, apparently as a gesture in delayed response to the president's decision to end the ban on high-level exchanges.⁶⁰

Baker's trip signaled the utter failure of the Administration's policy of "constructive engagement" with China. The failure was sharply underlined by the refusal of China's paramount leader, Deng Xiaoping, to see Baker to accept a letter from President Bush appealing for concessions. The letter was finally read aloud by Baker during his final meeting with the Chinese foreign minister in an attempt to salvage the floundering talks.⁶¹ Despite the minimal results, the Administration seemed wedded to its China policy. In the immediate aftermath of the Baker trip, Administration officials expressed confidence that they still had the votes in the Senate needed to prevent a congressional override of the president's expected veto of legislation conditioning extension of MFN on human rights grounds.⁶² In closed briefings with the secretary of state, who carefully avoided public questioning by the media or Congress following his return, members of Congress from both parties expressed dissatisfaction with the trip's outcome. But it remains unclear whether frustration at lack of progress on human rights could ultimately provoke Congress and the Administration to agree on a human rights policy toward China that moves beyond diplomatic dialogue to include economic pressure.

⁶⁰ It was announced, through a U.S. businessman, that China would release the student leader Wang Youcai and allow Han Dongfang, an ill labor organizer released from jail but with charges still pending against him, to leave the country. S.L. Law, "Tiananmen Student Leader To Be Freed," *Hong Kong Standard*, November 23, 1991. As of mid-December, these actions had yet to occur.

⁶¹ Jim Mann, "Baker Runs into the Diplomatic Great Wall of Resistance," *The Los Angeles Times*, November 24, 1991.

⁶² "We didn't lose any ground [in Congress as a result of the Baker trip] and we didn't gain any," an Administration official was quoted as saying. Don Oberdorfer, "China Trip Sways Few in Congress," *The Washington Post*, November 22, 1991.

The Work of Asia Watch

Asia Watch devoted more time and resources to work on China and Tibet than on any other country or region in Asia. Its office in Hong Kong produced a steady stream of information that in some cases changed the nature of the debate over human rights in China and in others gave new and important substance to the debate already under way. The Asia Watch staff in Washington was able to use that information effectively in Congress to challenge aspects of U.S. policy on China, but the impact of the research went far beyond the United States. Asia Watch's findings made headlines in newspapers in Hong Kong, Japan, Australia, Europe, Thailand and elsewhere.

Much of the information generated in Hong Kong came from leaked documents or *neibu* (restricted circulation) journals that enabled Asia Watch to analyze central government policy. The most notable example was a series of four articles published in a *neibu* journal for labor reform officials that proved beyond question the government's encouragement of labor reform camps to use cheap, forced labor to boost export earnings. U.S. law prohibits the import of goods made by forced labor, and Asia Watch tried to use China's deliberate violation of that law to raise concerns in the United States about who was detained in those camps and the conditions under which they were held. Prison labor quickly became one of the major human rights issues in Congress as a result.

Asia Watch was also able to obtain documents from the trials of leading dissidents in early 1991. Combined with interviews of friends and professional colleagues of those on trial, the documents provided key insights into why people like Chen Ziming and Wang Juntao were branded the "black hands" of the Tiananmen Square protests, how others connected with their activities became guilty by association, and how utterly unfair the judicial process was.

Another set of documents leaked to Asia Watch concerned a crackdown on groups organized to promote Mongolian culture and language in Inner Mongolia. The documents included secret party directives and statements handwritten in Mongolian script from an underground human rights organization in the province. The ability of Asia Watch's Hong Kong office to obtain, translate and analyze these documents contributed to the respect accorded the office by journalists, diplomats and others interested in developments in China.

Dissidents recently escaped from China supplied Asia Watch with

detailed, up-to-the-minute descriptions of prison conditions, the use of torture, and lists of those known to be detained throughout the country. The Hong Kong office helped to arrange medical and other assistance for released dissidents and their families, and for the families of still-detained prisoners. It maintained regular contacts with the media in China and other parts of Asia, and with the foreign diplomatic community in Hong Kong and China.

New, detailed, reliable information was the key to the success of Asia Watch's advocacy efforts in Washington. In April and May, Asia Watch provided information on prisoners in China and Tibet to Assistant Secretary of State for Human Rights and Humanitarian Affairs Richard Schifter for inclusion in a list of prisoners later submitted to Beijing. A meeting took place with Secretary Schifter in October to discuss prisoner cases and the upcoming trip to China by Secretary of State James Baker.

In June, Asia Watch staff discussed prison-labor exports from China with officials of the U.S. Customs Service who were in the process of investigating violations of U.S. law; the staff continued to provide information to the Customs Service during the year. In July, Asia Watch met with the newly appointed U.S. ambassador to China, R. Stapleton Roy, to brief him on human rights concerns and make recommendations for U.S. policy. Also in July, Asia Watch briefed the new human rights officer being dispatched to the U.S. Embassy in Beijing.

In August, Asia Watch wrote to President Bush to urge his intervention in the cases of Wang Juntao and Chen Zeming, and released the letter to the media with a public appeal. In September, following Asia Watch's participation in a visit to Tibet sponsored by the National Committee on U.S.-China Relations, the Asia Watch staff briefed the new director of the State Department's Office on Chinese and Mongolian Affairs.

Asia Watch's advocacy work helped to raise the profile of human rights before, during and after Secretary Baker's trip to China. Before the trip, Asia Watch wrote to Assistant Secretary of State for East Asian and Pacific Affairs Richard Solomon and met with him to discuss our recommendations and concerns. Following the Baker trip in November, we wrote to Secretary Baker and publicized our proposals for new U.S. policy initiatives.

Asia Watch reports were widely circulated and used on Capitol Hill in floor debates, Congressional resolutions, and letters to Chinese and U.S. government officials. Asia Watch was frequently consulted for advice on U.S. policy issues, such as MFN, as well as on specific prisoner cases.

On a dozen different occasions, Asia Watch testified before congressional committees and forums. Testimony was presented on MFN, prison labor and general human rights conditions before the Senate Foreign Relations Committee, the U.S. Customs Service, the Senate Finance Committee, the House Ways and Means Committee (its Subcommittee on Trade), the House Foreign Affairs Committee (its Subcommittees on International Economic Policy and on Trade and Human Rights and International Organizations), the House Committee on Merchant Marines and Fisheries (its Oversight and Investigations Subcommittee) and the Congressional Human Rights Caucus.

Washington and Hong Kong-based staff briefed various Congressional members and staff traveling to China in January, March, August, September and December, and in many cases debriefed them upon their return. Asia Watch also participated in a seminar for Hill staff on MFN sponsored by the Congressional Research Service in June.

On the anniversary of the June 4, 1989 crackdown, Asia Watch co-sponsored a rally on the Capitol steps with the Congressional Human Rights Caucus and other organizations. A scroll with the names of over 1,100 political prisoners provided by Asia Watch was signed by members of Congress and delivered to the Chinese Embassy with a message calling for their release and a full accounting of their status and whereabouts.

Other Washington-based advocacy efforts were focused on the World Bank, providing information to foreign embassies (including those of countries sending human rights delegations or political leaders to China in 1991, namely Australia, France and Japan), and responding to hundreds of inquiries or requests for interviews from domestic and foreign correspondents.

In September, Asia Watch representatives met for the first time with China's ambassador to the United States.

HONG KONG

Human Rights Developments

Unprecedented international scrutiny of human rights in Hong Kong took place in 1991, brought on by the enactment of a local Bill of Rights, the report of the United Kingdom to the U.N. Human Rights Commission, and visits by human rights delegations such as one sent by the International Commission of Jurists. The continued incarceration of nearly sixty thousand Vietnamese asylum-seekers stood out as Hong Kong's most glaring and intractable human rights problem. It was compounded by the resumption of forced repatriation before the government had rectified flaws in the procedures for identifying true refugees and ensured that adequate safeguards were in place to protect those who returned. Hong Kong's Bill of Rights promised to be a powerful new tool for challenging oppressive colonial laws and government actions, but its efficacy was hobbled by various restrictions, notably a period of immunity for certain of the government's police powers. The crisis of confidence in Hong Kong's future deepened as both the British and local governments compromised on the principle of Hong Kong's autonomy to accommodate China.

As of year's end, approximately 59,000 Vietnamese were being held in closed detention centers awaiting either evaluation of their claims to refugee status or repatriation to Vietnam. The relevant immigration ordinance sets no precise limit on the amount of time that Vietnamese may be detained. Waits of over two years are normal, and some Vietnamese, particularly unaccompanied minors, have been waiting since 1988 to undergo the first "screening" of their claims.

Former residents of Vietnam who came to Hong Kong after having spent some time in China also face indefinite detention. These suspected "ex-China" Vietnamese are considered to have the same legal status as Chinese migrants, who under Hong Kong law are not entitled to any consideration of their refugee status. But unlike Chinese migrants, who are usually repatriated to the mainland within hours of interception in Hong Kong, these "ex-China" Vietnamese must await identification and acceptance by China as former residents, a wait that can take years unless the Hong Kong government intervenes.

While illegal under international law, the distinction in Hong Kong's law between the treatment of Vietnamese and Chinese migrants is a product of political realities. Hong Kong's territory would be flooded with arrivals from China if it did not enforce a stringent return policy, and China would not countenance Hong Kong openly "screening" Chinese citizens for refugee claims. On the other hand, in response to international pressure, Hong Kong has maintained first asylum for Vietnamese boat people, and agreed to conform its policies to the 1951 Refugee Convention and its 1967 Protocol. Britain, which is a party to the Refugee Convention, did not extend its treaty obligations to Hong Kong. It did, however, extend its obligations under the International Covenant on Civil and Political Rights to its colony. The use of racial categories to distinguish between the rights of immigrants under Hong Kong's law violates Article 26 of the Covenant, which states that all persons are equal before the law and are entitled without any discrimination to the equal protection of the law. Hong Kong, apparently recognizing this difficulty, excepted its immigration laws from the application of its local Bill of Rights, which reproduces this guarantee. The Bill of Rights aside, the Covenant, with its prohibition against legal discrimination on the basis of national origin, still applies to Hong Kong.⁶³ Moreover, quite apart from Britain's failure to extend treaty refugee guarantees to Hong Kong, the customary law prohibition against *refoulement* — returning a person to face political persecution — effectively mandates screening of potential refugees even among Chinese aliens.

Conditions in the detention centers for Vietnamese asylum-seekers are more squalid and dangerous than those of local prisons. Inmates, who are referred to by number rather than name, live behind barbed wire, in corrugated metal huts lined by rows of triple bunk beds, or in some cases, in large tents. Both the internal and external living space per inmate falls

⁶³ The 1985 Joint Declaration between the governments of China and Britain, a treaty which lays out the blueprint for Hong Kong after the transition to Chinese sovereignty, says that the provisions of the Covenant "as applied to Hong Kong" shall remain in force. Although Britain made certain reservations in the application of the Covenant to Hong Kong, Article 26 is not among them. However, Britain did not extend the protections of the Covenant's 1966 Optional Protocol to Hong Kong, which would have provided a forum (the United Nations Human Rights Committee) for raising the issue of a racially discriminatory immigration policy.

well below international standards.⁶⁴ Little opportunity or space was available for work, education or exercise. The police or the correctional services department manage most detention centers and enforce their rules, including provisions for limiting visits ("subject to orders of Superintendent"), censoring mail (may be read "for good cause" or restricted "for good cause") and punishing escape, vandalism, disobedience and disrespect. However, assault, rape and substance abuse within the camps remain serious problems, and Vietnamese make periodic allegations of abuse by guards and police. The government strictly controls press access to the camps and discourages stories on the plight of particular asylum-seekers.

Families and minors have suffered the effects of these conditions especially severely. Camp workers report a widespread breakdown in family relationships and a rise in child abuse and juvenile delinquency.⁶⁵ Several thousand unaccompanied minors, the most vulnerable inmates, live in these conditions the longest. Although the special procedures for evaluating their claims were revised in 1991, the new committee has only begun to make headway in resolving the backlog of cases.

The prolonged detention of asylum-seekers cannot be justified on grounds of public order. Indeed, Hong Kong has handled much larger numbers of both Vietnamese and Chinese immigrants on past occasions without resorting to incarceration. The only stated rationales for detention have been deterrence of future arrivals and deference to local public opinion, neither of which justifies the arbitrary deprivation of liberty prohibited by Article 9 of the International Covenant on Civil and Political Rights. Some eighty thousand arrivals later, even Hong Kong authorities no longer claim that detention effectively deters others from setting sail. Nor does the unpopularity of a specific national or racial group make a deprivation of liberty less than "arbitrary" under the

⁶⁴ Anne Wagley Gow, *Protection of Vietnamese Asylum Seekers in Hong Kong: Detention, Screening and Repatriation* (June 1991) working paper submitted to the U.N. Economic and Social Council, Commission on Human Rights, and Subcommission on Prevention of Discrimination and Protection of Minorities), p. 8. The exception is Tai Ah Chau Detention Centre, in which residents have access to an entire island during the day.

⁶⁵ Refugee Concern Hong Kong, *Defenseless in Detention*, June 14, 1991.

Covenant.⁶⁶

The 1951 Refugee Convention protects both refugees and potential refugees from unnecessary restriction on their movements and penalties imposed solely because of illegal entry.⁶⁷ Hong Kong has not seriously claimed that detention of all Vietnamese not yet determined to be refugees is necessary as a matter of public order. Prior to 1987, the colony allowed an even greater number of Vietnamese citizens (mostly of ethnic Chinese origin) to live in open camps pending their resettlement abroad. More recently, 111 boat people were released on nominal bail while they challenged the government's action in arresting them directly after a court had ordered them freed on habeas corpus grounds. In that case, a Hong Kong court had found a detention of eighteen months unreasonable, at least under circumstances in which the Vietnamese had asked not for asylum but for supplies and repairs.⁶⁸ The government's response to this case was to amend the Immigration Ordinance to permit the incarceration of any Vietnamese arriving illegally for as long as the government deems necessary.

In September and October, Britain and Vietnam agreed in principle to the mandatory repatriation of all Vietnamese who were not refugees, and that those who would be forced back first would be the so-called doublebackers — Vietnamese who had voluntarily returned from Hong Kong to Vietnam and then left again for Hong Kong. On November 9, twenty men, sixteen women and twenty-five children were forced aboard a transport plane bound for Hanoi. Hong Kong police at the scene wore plain clothes and did not carry weapons, but some Vietnamese put up so much resistance they had to be dragged or wrapped in blankets and carried aboard. Hong Kong officials were quick to deny that the repatriations were "forcible," out of sensitivity to Vietnam's rejection of the term, but any other description would have been inaccurate.

⁶⁶ See Article 26.

⁶⁷ Article 31; see also Conclusions on the International Protection of Refugees, No. 22, para. 11(b)(1) (adopted by the Executive Committee of the United Nations High Commissioner for Refugees Programme, 1981).

⁶⁸ *In re Pham Van Ngo and Others* (Sears, J.), 1 Hong Kong Law Review, 499, 508 (1991).

The undisclosed agreements on mandatory repatriation contain guarantees that Vietnam will not "persecute" or "harass" those returned for their act of leaving the country, according to statements by Hong Kong's secretary for security. However, past agreements of this sort have not protected those accused by Vietnam of "organizing" boatloads of fleeing Vietnamese. Nor is there any indication that returned Vietnamese will be immune from liability for actions in Hong Kong, where many Vietnamese have expressed views critical of Vietnam's government. Hong Kong has promised not to return genuine refugees to Vietnam — that is, those with a well founded fear of persecution on specified grounds — but given that Hong Kong's screening procedures are flawed, it was difficult to be confident that no *refoulement* would take place. The flaws are both procedural and substantive. Asylum seekers have been subject to superficial interviews without adequate interpreters or pre-screening counseling. Most are not given legal assistance in preparing their appeals and have no right to review the reasons for their initial rejection or the record of their interview. Government authorities decline to articulate the precise standards applied in determining refugee status for Vietnamese, and decisions suggest that they are unusually stringent. In the meantime, even with the new repatriation agreement, Hong Kong officials admitted that most Vietnamese are likely to stay in Hong Kong for "a very long time."⁶⁹

The provisions of Hong Kong's new Bill of Rights are modeled on those of the International Covenant on Civil and Political Rights. Article 3 of the Bill of Rights repeals all inconsistent pre-existing legislation. Six ordinances were exempted for one year from any such repeal, with another one-year "freeze" possible by resolution of the Legislative Council.⁷⁰ These ordinances, which all grant extraordinary and highly discretionary law-enforcement powers to administrative authorities, are the laws most likely to conflict with individual-rights guarantees. In arguing for the "freeze" provision, the government claimed that there would be a dangerous gap in existing police powers if these laws were

⁶⁹ "No quick end' to problem," *South China Morning Post* October 4, 1991.

⁷⁰ The exempted ordinances are the Immigration Ordinance (Cap. 115), the Societies Ordinance (Cap. 151), the Crimes Ordinance (Cap. 200), the Prevention of Bribery Ordinance (Cap. 201), the Independent Commission Against Corruption Ordinance (Cap. 204) and the Police Force Ordinance (Cap. 232).

struck down. However, the government has not committed itself to revising these laws during the "freeze," but merely to reviewing them for possible conflict with the Bill of Rights.

Although the Bill of Rights came into operation on June 8, the first judicial decisions relying on its provisions did not appear until months later, after an international conference sponsored by the University of Hong Kong drew attention to the new law. These decisions struck down presumptions of guilt in Hong Kong's drug laws and the automatic issuance of stop orders to prevent judgment debtors from leaving the territory. The High Court also required the government to provide legal assistance to a criminal defendant, holding that the Bill of Rights establishes a test for eligibility independent of the rules governing the Legal Aid Department.

While these early cases are encouraging, it remains to be seen whether the Bill of Rights can be used to protect a wide range of rights and plaintiffs. Because Hong Kong follows the British practice by which the loser in civil litigation must pay the winner's legal fees, the litigation of rights issues will be limited to those few plaintiffs with the means to risk an adverse judgment. The government has rejected proposals to establish a commission that could inexpensively enforce the rights of the disadvantaged or to alter or waive the rule on payment of fees. Another limitation on the Bill of Rights is that it does not govern most disputes between private individuals. Thus, employment discrimination on the basis of gender, a serious problem in Hong Kong, is unlikely to be reached under this law.

Nineteen ninety-one was no exception to the Hong Kong government's history of exercising its considerable powers to mute confrontations with China. In late 1989, the governor assured China that the territory would not be used as a "base for counterrevolutionary activities." In July 1991, the government appeared to act on this pledge by refusing to admit over a dozen overseas students who had landed in Hong Kong to attend a pro-democracy conference. Two months earlier, customs officials impounded a replica of the Tiananmen Square "Goddess of Democracy" which was intended to be used at a mass rally to commemorate the June 4, 1989 massacre.

Britain, under pressure from China, breached the promise that Hong Kong would enjoy a "high degree of autonomy," as set forth in the 1984 Sino-British Joint Declaration on the Question of Hong Kong. Following Britain's concessions to China over the financing and management of Hong Kong's new airport project, another compromise was announced

regarding the composition of Hong Kong's highest court. Under Hong Kong's Basic Law — the equivalent of the territory's constitution — the Court of Final Appeal may be composed of local judges or, "as required," foreign judges from other common-law jurisdictions. The Sino-British Joint Liaison Group, after months of stalemate on the composition of the court, announced on September 27, 1991 that only one of the five judges could be selected from overseas or retired local judges. This restriction was criticized by liberal legislators and the Bar Association as a concession to Beijing, which would prefer the court not to be overly independent. In the face of public pressure, British officials hinted that they might seek to renegotiate the composition of the court, but senior Chinese government officials reportedly rejected this possibility.⁷¹

On December 4, the Legislative Council overwhelmingly voted for a counter-proposal that would allow the high court greater flexibility in using overseas judges. This marked the first time that the legislature has opposed an agreement worked out by China and Britain. The leader of the British contingent to the Joint Liaison Group, Anthony Galsworthy, said that if the legislature were to veto the Sino-British proposal, the government would not likely establish the high court before 1997. He reaffirmed British commitment to the restriction on foreign judges. China swiftly reiterated its view that the Legislative Council was without power to change the agreement.⁷²

Britain was similarly reticent, and China intransigent, on accelerating the transition to a democratically elected legislature. Liberals won sixteen of the eighteen seats contested in Hong Kong's first legislative elections, while every pro-China candidate was defeated. China's response was to claim that the liberals' landslide did not represent the will of most Hong Kong people, and to declare that the legislature was merely an advisory body, not a law-making branch of government.⁷³ Although prior to the election British leaders had hinted

⁷¹ "Beijing rules out court deal," *The Standard*, November 5, 1991.

⁷² Stanley Jeung and Rita Lun, "Legco powerless on Court says Beijing," *The Standard*, December 6, 1991.

⁷³ Ursula Yeung, "Legislators 'lack public support,'" *The Standard*, November 5, 1991; Kent Chen, "Legco only an advisory body, says senior NCNA official," *South China Morning Post*, October 3, 1991, p.7.

that they might press Beijing to increase the number of elected positions allocated in the Basic Law, China again showed resistance and Britain has not yet pursued the matter.

These battles over the composition of the legislature and judiciary were all the more important because of the expansive powers vested in the colony's colonial administration. In particular, Hong Kong lacks laws that require the government to disclose administrative decisions, internal regulations, or the information that the government collects on groups or individuals. The Official Secrets Acts of 1911 and 1939, now discarded in Britain, remain in force in Hong Kong, criminalizing any unauthorized disclosure of official information by both the person who initially reveals the information and any person who learns of it.⁷⁴ Although prosecutions under the Official Secrets Act did not occur in 1991 and were rare in previous years, the existence of the act worked to inhibit further a press that already was subject to broad censorship powers at home.⁷⁵

The independence of the judiciary and legislature, and the accountability of government to those governed, are of the utmost importance in protecting human rights as 1997 approaches. Asia Watch was concerned that precedents set by expedience now, such as the mass incarceration of civilians, would lay the foundation for ever more serious rights abuses in the future, especially while China's commitment to the

⁷⁴ See Yash Ghai, "Official Information: Government Secrets or Public Asset?" *Hong Kong Law Journal*, Vol. 21, Part 1, January 1991, pp. 78-86.

⁷⁵ Censorship powers include the Film Censorship Ordinance, which permits the government to ban a film if its showing "would seriously damage good relations with other territories"; the Television Ordinance, which provides for pre-censorship of all programming; the Telecommunications Ordinance, which authorizes controls on grounds of "security"; and the Prevention of Bribery Ordinance, which bars unauthorized disclosure of the names of suspects in corruption investigations.

In a survey conducted in 1991, almost a quarter of journalists admitted to apprehension or self-censorship, especially when reporting on China, and about seventy percent believed press freedom would be curtailed after 1997. (Fanny Wong, "Reporters affected by self-censorship," *South China Morning Post*, September 24, 1991.) China encourages this attitude by strictly controlling the access of Hong Kong reporters to the mainland, and maintaining dossiers on which journalists and publications are friendly and which are not.

rule of law remains questionable.

The Right to Monitor

In practice, Hong Kong's colonial administration allows human rights monitors relative freedom to conduct their activities, but the laws governing the territory both now and after the 1997 transition to Chinese rule provide ample basis for restriction.

The Societies Ordinance vests in the commissioner of police the power to refuse to register any society that is likely to be used for any purpose "prejudicial to or incompatible with peace, welfare or good order," or that is affiliated with a political organization abroad. Moreover, the commissioner may inspect membership registers, enter meeting places, and order amendments of society constitutions. Although originally intended to combat organized crime in the form of Triad societies, the law has inhibited other associations as well. To avoid police supervision, groups concerned with both politics and human rights have chosen to register as commercial organizations rather than as societies.⁷⁶

China requested that the statutory prohibition against local "political organizations or bodies" establishing ties with foreign "political organizations or bodies" be written into the Basic Law as well, in Article 23. The Societies Ordinance is one of the laws exempted from the operation of the Bill of Rights for up to two years. To date, the government has not announced any amendment to bring the law in conformity with the Bill of Rights guarantees to free association and assembly. After 1997, the provisions of the Basic Law, which has been promulgated as a national law of China, will take priority over the Bill of Rights, a local Hong Kong statute. However, China has agreed in the Sino-British Joint Declaration, a bilateral treaty, to keep in force the identical guarantees of the International Covenant on Civil and Political Rights.

After heated debate, China also prevailed in inserting in Basic Law Article 23 a promise to outlaw sedition, a crime previously unknown in Hong Kong. The article states that Hong Kong "shall enact laws on its

⁷⁶ S.L. Law, "Dissidents see firm registration loopholes," *The Standard*, November 25, 1991.

own to prohibit any act of treason, secession, sedition, subversion against the Central People's government, or theft of state secrets, [and] to prohibit foreign political organizations or bodies from conducting political activities in the Region." Asia Watch is concerned that such laws could easily be used to silence human rights monitors, political critics or journalists, and to close Hong Kong to scrutiny by outsiders.

In previous years, other local laws have been used to punish or inhibit protest. On September 29, 1989, activists were beaten by the police and arrested for unlawful assembly. The activists had been attempting to march in protest of the June 4 Beijing massacre at a site where the New China News Agency was giving a cocktail reception. One month later, the political advisor to the Hong Kong governor wrote to the head of the Foreign Affairs Section of the New China News Agency stating that the government "has no intention of allowing Hong Kong to be used as a base for subversive activities against the People's Republic of China." He cited as evidence the arrest of these activists and the government's rejection of a permanent site for a replica of the "Goddess of Democracy" statue that was raised by students in Tiananmen Square. The law invoked in prosecuting the demonstrators was the Public Order Ordinance, which gives the commissioner of police authority to license and control public assemblies of more than thirty people and processions of more than twenty. Shortly after the arrests, the police obtained search warrants and seized unedited videotapes of the incidents from local television stations, although these ultimately were not used at trial. The seizures were condemned both in Hong Kong and abroad as violating press freedom.

In February 1990, prominent pro-democracy activists led a protest against the lack of democracy in the Basic Law. Five months later, just after the promulgation of the Basic Law, they were charged with using megaphones (in Hong Kong usage, "loud-hailers") without a permit from the commissioner of police. The Summary Offences Ordinance prohibits unlicensed use of loud-hailers without "lawful excuse." At trial, an assistant police commission testified that in his seventeen years of service he had never come across a prosecution for using loud-hailers in public gatherings, and confirmed that such unlicensed use (by tour groups or school outings, for example) is part of everyday life in Hong Kong. The defendants' conviction was ultimately reversed on the basis that the prosecution was an abuse of power, and the appeals court did not examine whether the law violated the guarantee of freedom of assembly in the International Covenant on Civil and Political Rights.

In December 1989, Reverend Fung Chi Wood, a well-known local elected official, was arrested for refusing to produce his identity card to a police officer. Reverend Fung, who was at the time in an elevator on his way to lead a demonstration protesting a draft of the Basic Law, produced identification ten minutes later once he was on the street. The law requiring Hong Kong residents to produce identity cards on demand is part of the Immigration Ordinance, and designed for the control of illegal immigration. Although it was extremely unlikely that Reverend Fung was suspected of being an illegal immigrant, his conviction was upheld. The Immigration Ordinance was permanently excepted from the operation of the Bill of Rights. Identity card checks are still used in Hong Kong at public gatherings for purposes other than immigration control.⁷⁷

These incidents raise the question whether the Hong Kong government is committed to politically motivated law enforcement to appease China. The government's interventions in impounding a statue of the "Goddess of Democracy" and refusing to admit into the colony participants in a pro-democracy convention kept this question alive. In local affairs, the government's response has been selectively to limit access to sensitive information,⁷⁸ for example, through restrictions on journalists visiting detention centers, or through the Official Secrets Act. The right to monitor is largely a matter of administrative discretion in Hong Kong. It is highly doubtful that the executive branch under Chinese rule will be as tolerant of dissent as British administrators have proven. Under these circumstances, it behooves the colonial administration to amend and supplement Hong Kong's legal protection for human rights critics, rather than relying on discretion in enforcement.

⁷⁷ See "Unlawful assembly denied," *South China Morning Post*, July 4, 1991, describing an identity card check of an audience at a courtroom hearing on the legality of a widely publicized community protest over the construction of a village crematorium.

⁷⁸ Included in the categories of classified information is anything that could cause "embarrassment" to the Hong Kong government.

U.S. Policy

The Bush Administration showed signs of recognizing Hong Kong's special position as it moves from British to Chinese sovereignty, but stopped short of treating it as an autonomous entity. The State Department was quick to cite Hong Kong's vulnerability should Most Favored Nation trading status for China be revoked. However, it was silent about Britain's failure to press for more elected legislators or overseas jurists. While the State Department reiterated U.S. opposition to mandatory repatriation of Vietnamese from Hong Kong, it tacitly accepted the policy by characterizing it as a bilateral matter between Britain and Vietnam.

Congress was more directly responsive to human rights issues in Hong Kong. On September 20, Senator Mitch McConnell introduced a bill that in essence would write into U.S. policy the understanding of Hong Kong's autonomy set forth in the Joint Declaration. Under the bill, Congress "welcomes" the continued application to Hong Kong of the International Covenant on Civil and Political Rights and the constitution of the legislature through elections. The bill further calls for the United States to recognize Hong Kong passports and travel documents, to encourage Hong Kong residents to travel to the United States, to expand informational ties with Hong Kong's legislature, to maintain Hong Kong's Most Favored Nation trading status, and to continue to recognize Hong Kong's separate legal status under U.S. law. Martin Lee, an outspoken advocate of human rights and the leader of Hong Kong's most popular political party, visited the United States in November to lobby for the McConnell bill. The bill, which has attracted over a dozen co-sponsors, is currently in the Senate Foreign Relations Committee, which is due to hold hearings on it in early 1992.

The Work of Asia Watch

Asia Watch was given access to Hong Kong's detention centers throughout 1991 by the government's Security Branch, and conducted numerous interviews with Vietnamese on human rights conditions in Vietnam. Asia Watch issued two newsletters based on this research which were critical of Hong Kong's policy on Vietnamese asylum-seekers. "Vietnam: Repression of Dissent" described the failure of the screening process to identify as refugees Vietnamese human rights activists and

dissident artists. "Mandatory Repatriation and Indefinite Detention: The Incarceration of Vietnamese in Hong Kong" laid out the rights abuses inherent in the detention policy and suggested alternatives to the premature resumption of forcible return. Throughout 1991, Asia Watch intervened with both Hong Kong and United Nations authorities on behalf of Vietnamese seeking refugee status.

In July, Asia Watch issued a press release condemning Hong Kong's refusal to let overseas Chinese students pass through Kai Tak airport to attend a pro-democracy convention. Local students responded to the government's stance by holding the convention at the airport. In June, Asia Watch attended the first conference on the Bill of Rights in Hong Kong, and assisted the Hong Kong University Law Faculty in gathering human rights publications on Hong Kong. Asia Watch also provided a chapter on Hong Kong in the Human Rights Watch report released during the October meeting of Commonwealth heads of government in Zimbabwe.

INDIA

Human Rights Developments

The human rights situation in India continued to deteriorate in 1991 amid unprecedented political turmoil. In November 1990, the minority government of V.P. Singh collapsed and was replaced by that of Prime Minister Chandra Shekhar, which then fell in March 1991. Parliamentary elections held in May and June saw the worst violence of any election since the country's independence. Among those killed was former Prime Minister Rajiv Gandhi, who died in a bomb explosion on May 20 while campaigning in the state of Tamil Nadu. In the wake of his assassination, local politicians threatened to expel Sri Lankan refugees, and police in Tamil Nadu arrested several thousand suspected members of the militant Sri Lankan separatist group, the Liberation Tigers of Tamil Eelam (LTTE), which was believed responsible for the killing. One suspect later died in custody under suspicious circumstances.

Human rights issues remained at the forefront of the political upheavals, as secessionist movements in the border states of Punjab, Assam, and Jammu and Kashmir continued to claim thousands of lives and led to widespread abuses by security forces and armed militant

groups. The Terrorist and Disruptive Activities Act (TADA), among other security laws, was used widely in these states and throughout India to detain alleged militants and suspected supporters without charge or trial. Peaceful opponents of government policy were caught up in the TADA net. Government security forces and armed militants also committed grave violations of the laws of war, including indiscriminate attacks on civilians.

In other states, including Uttar Pradesh, Andhra Pradesh and Bihar, armed groups operating with the connivance and, in some cases, assistance of local police attacked and killed low-caste villagers and peasant activists. In Maharashtra, Madhya Pradesh and Gujarat, peaceful demonstrators protesting against large-scale development projects were arrested and beaten as part of a government effort to censor information about human rights abuses and the environmental impact of such projects.

In Kashmir, India's central government continued to pursue its brutal campaign against militant separatists despite growing criticism by international and domestic human rights groups. Throughout the year, the army and security forces routinely engaged in extrajudicial executions, disappearances, widespread torture, arbitrary arrest and prolonged detention without trial.

In its May 1991 report, *Kashmir Under Siege*, Asia Watch itself documented some two hundred extrajudicial executions of civilians and suspected militants by army and paramilitary forces in Kashmir since the beginning of 1990 — a small portion of the estimated killings in this period. In many of the cases detailed in the report, troops opened fire on crowds of unarmed demonstrators, or in crowded markets and residential areas. Such violations continued through 1991: on May 8, at least fourteen mourners in a funeral procession were killed when government forces opened fire on a crowd of three thousand at a Srinagar cemetery. According to press reports, when mourners returned to the scene to collect the bodies, the troops again opened fire, killing a teenage boy.⁷⁹

To date, Asia Watch is unaware of any conviction of a member of the Indian security forces for any human rights violation in Kashmir. Indeed,

⁷⁹ "Indian Forces in Kashmir Fire on Rebel Mourners," *The New York Times*, May 9, 1991; "Indian Troops Shoot Kashmiris at Burial," *The Washington Post*, May 9, 1991.

the rape of women in the village of Kunan Poshpora by army soldiers of the Fourth Rajputana Rifles became the focus of a campaign to acquit the army of charges of human rights violations and discredit those who brought the charges. The rapes allegedly occurred during a search operation on the night of February 23 in which the men were taken away from their homes and interrogated. Villagers complained first to local army officials and then to the local magistrate, who visited the village and filed a report that included the statements of twenty-three women who claimed to have been raped.

Publicity about the incident in the national press provoked strong denials by army officials. On March 17, a fact-finding delegation headed by Chief Justice Mufti Bahauddin Farooqi interviewed fifty-three women who had made allegations of rape and tried to determine why a police investigation into the incident had never taken place. Farooqi reportedly stated that he "had never seen a case in which normal investigative procedures were ignored as they were in this one." However, a confidential report filed by a local official, the divisional commissioner, concluded that "the allegations leveled against the army cannot be believed and have apparently been made by villagers as an afterthought under pressure from the militants."⁸⁰ A police investigation ordered into the incident was never carried out because the assistant superintendent assigned to the case was transferred before he could start.

In response to criticism about the government's investigation, the army requested the Press Council of India to investigate the incident. The committee members visited in June, more than three months after the incident occurred. After interviewing a number of the alleged victims, the committee concluded that contradictions in the women's testimony rendered the charge of rape "baseless." Examinations conducted on thirty-two of the women on March 15 and 21 confirmed that the women had abrasions on the chest and abdomen, and that the hymens of three of the unmarried women had been torn. However, the committee concluded

⁸⁰ The report's conclusions were based primarily on the women's failure to report their rape to law-enforcement officials immediately and, in some cases, at all. The report also claimed that there were too few soldiers in the unit to have committed the number of rapes alleged. Officials challenged the women's credibility because the number of alleged victims kept changing. Independent journalists suggested that a smaller number of women may have been raped and that others joined them so that they would not be ostracized.

that "such a delayed medical examination proves nothing" and that such abrasions are "common among the village folk in Kashmir."⁸¹ The committee dismissed the torn hymens as evidence of rape, stating that they could be the result of "natural factors, injury or premarital sex."

While the results of the examinations by themselves could not prove the charges of rape, they raised serious questions about the army's actions in Kunan Poshpora. As Asia Watch noted in its report, the alacrity with which military and government authorities in Kashmir discredited the allegations of rape and their failure to follow through with procedures that would provide critical evidence for any prosecution — in particular prompt medical examinations of the alleged rape victims — raise serious concerns about the integrity of the investigation. The failure promptly to establish an impartial investigation into the incident suggests that the Indian authorities have been more interested in shielding the army from charges of abuse. Given evidence of a possible cover-up, both the official and the Press Council investigation fall far short of the measures necessary to establish the facts in the incident and determine culpability.

Since their campaign for secession escalated in late 1989, Kashmiri militants have engaged in grave violations of humanitarian law by executing suspected police informers, taking hostages, and threatening and murdering prominent Muslims and members of the minority Hindu community. Militants have also violated the laws of war prohibiting indiscriminate attack on civilian targets.

Kidnappings by Kashmiri militant groups escalated in 1991, and included among the victims a number of foreigners. In March, two Swedish engineers were kidnapped by the Muslim Janbaz Force, which demanded that the United Nations and Amnesty International be allowed to conduct fact-finding missions in Kashmir; the two men escaped from their captors in June. On June 27, a group of Israeli tourists on a houseboat were attacked by militants, who took seven men hostage. A tourist and a militant were killed and three tourists were injured when a gun battle erupted after one of the Israeli men grabbed a militant's rifle and opened fire. As the militants fled, they took one of the tourists hostage, releasing him a week later. Militants also kidnapped civil servants of the state government and demanded the release of detained colleagues in exchange.

By December 1991, Punjab had registered a record 5,300 killings by

⁸¹ The committee failed to inquire whether the men had similar injuries.

militant forces, criminal gangs and security forces, up from some 4,000 in 1990. Among those killed were many candidates to the state assembly and national Parliament,⁸² some of whom were assassinated by militant groups contesting the elections and others by gunmen apparently associated with political parties. Militants boycotting the elections also engaged in indiscriminate attacks on civilians. Days before the polls were scheduled to open in Punjab on June 22, unidentified gunmen opened fire on passenger trains near the city of Ludhiana, killing at least seventy-four people. Originally scheduled for June, the Punjab elections were postponed until September following the election of Prime Minister Narasimha Rao. On September 18, the elections were again canceled, and tentatively rescheduled for February 1992.

Since 1984, government forces in Punjab, including the Punjab Police, Border Security Force, Central Reserve Police Force and the Indian Army,⁸³ have resorted to widespread human rights violations to fight the militants, including arbitrary arrest, prolonged detention without trial, torture, disappearance and summary killing of civilians and suspected militants.

Many of the executions in 1991 involved persons who were first detained in police custody and then reported by the authorities to have been killed in an "encounter" with security forces. In many of these cases, Asia Watch believes the victims were murdered in the custody of the police. Detainees also frequently "disappeared" in police custody; police in Punjab defied court orders and thwarted efforts by family members to locate their relatives and produce them in court. Torture was practiced systematically in police stations, prisons and the detention camps used by paramilitary forces throughout Punjab. Family members were frequently detained and tortured to reveal the whereabouts of relatives sought by the police. The police also seized local newspapers and harassed journalists. Although the victims of torture and the relatives of victims of extrajudicial killings and disappearances identified police officers

⁸² Punjab has been ruled directly from New Delhi since May 1987, when the state assembly was dismissed.

⁸³ One army unit is permanently stationed in Punjab, and beginning in late 1990, additional army units were deployed in the border districts to supplement the police and paramilitary forces. In November 1991, the army was deployed throughout the state.

responsible for gross human rights violations in Punjab, none was prosecuted.

For their part, some Sikh militants pursued their campaign for a separate state by assassinating civil servants, political candidates and journalists. Militant groups also engaged in indiscriminate attacks on civilians in Punjab and other states. In one of the worst such attacks, on October 16, at least forty-one people died in two bomb explosions in Ruderpur, Uttar Pradesh — one at a Hindu festival and the second at a hospital where the wounded were being taken.

Certain militant organizations issued death threats and assassinated Sikhs who did not support the separatist cause or a fundamentalist Sikh ideology. The leaders of several major militant organizations issued press statements warning journalists to adhere to a strict code of conduct. Failure to abide by these dictates is punishable by death.

The escalating violence in Punjab also spread to neighboring states, particularly Uttar Pradesh, where some militants have become involved in smuggling across the Nepal border. State authorities, like their counterparts in Punjab, gave police officials blanket authority to act outside the law against suspected militants. On July 13, ten Sikh bus passengers traveling in Uttar Pradesh were taken into custody and shot dead in what authorities claimed was an armed "encounter" with the police. An eleventh detainee later disappeared. Eyewitnesses to the detention interviewed by Asia Watch reported that none of the detainees was armed, and Asia Watch believes that the detainees were summarily executed. A number of eyewitnesses who filed affidavits in the courts were later threatened by the police.

In Tamil Nadu, the police launched a massive search for the suspected assassins of Rajiv Gandhi, arresting thousands. On June 28, the authorities in Tamil Nadu ordered the 85,000 Sri Lankan refugees in the state living outside refugee camps to register with the police or face deportation. Since then, thousands who failed to register have been arrested, although to Asia Watch's knowledge they have not been deported. On July 27, three Sri Lankans were detained in Madras under the National Security Act for reportedly publishing a Tamil periodical without a license and reporting "the activities of LTTE militants."

A government crackdown against suspected members and sympathizers of the LTTE also resulted in widespread arrests. On July 17, the police arrested Mirasdar Shanmugam, who was believed to be a key link in the assassination conspiracy. On July 20, his body was found hanging from a tree, and the police claimed that he "escaped" from

custody and "committed suicide" or "was killed by the LTTE." Shanumugam's relatives and lawyer have alleged that he was killed by the police, and government officials have also raised concerns that he may have been killed in police custody. A magisterial inquiry was ordered.

Throughout India, deaths in custody occurred at an alarming rate in 1991, frequently as a result of torture. Systematic abuse of detainees in police custody was largely tolerated if not condoned by government officials.⁸⁴ The rigid class system in Indian prisons — which affords better treatment to prisoners of higher socioeconomic status — and corruption in the police force also served to perpetuate the widespread system of abuse.

An Asia Watch mission found that women were particularly at risk in prison, where custodial rape and other forms of sexual abuse are common. Women receive particularly harsh treatment in police lock-ups, where cells are overcrowded, smelly and insect-infested, and detainees are not given beds, soap or changes of clothes. The police are empowered to hold detainees for up to ninety days after obtaining an order for remand from a magistrate.

Since 1985, the World Bank has funded a development project to construct the Sardar Sarovar Dam on the Narmada River in western India. One of a series of dams to be constructed over the next four decades, the Sardar Sarova Dam is to provide irrigation to Gujarat, Maharashtra and Madhya Pradesh. Protests against the dam have resulted in arrests and beatings of peaceful demonstrators, and the governments concerned have attempted to censor information about the environmental impact of the project. In August 1991, some sixty protestors were arrested during a demonstration and charged under Section 144 of the Indian Penal Code for "unlawful assembly." They were later released. On November 17, Medha Patkar, an activist with Narmada Bachao Andolan — an organization which has peacefully opposed construction of the dam — was arrested and detained for two days on charges that included "unlawful assembly," "instigating people" and "committing outrage against government officials." She was released on November 19 but the charges are still pending.

⁸⁴ See Asia Watch, *Prison Conditions in India*, March 1991.

The Right to Monitor

Although human rights organizations in India function relatively freely, a number of human rights groups that have published reports on Kashmir, particularly the Coordination Committee on Kashmir and the Committee for Initiative on Kashmir, have been accused by government officials of collaborating with the militant groups and serving as agents of foreign intelligence operations. The government has provided no evidence to support the allegation. Some members of these and other groups have come under police surveillance.

On September 28, Shankar Guha Niyogi, a trade unionist and a member of the national council of the People's Union for Civil Liberties, was assassinated by unidentified gunmen while he was asleep in his home in Bhilai, Madhya Pradesh. Although two men have been arrested in the case, powerful industrialists named by the hit men as having ordered the assassination have not been.

On December 7, Narra Prabhakara Reddy, a member of the Andhra Pradesh Civil Liberties Committee (APCLC), was shot at his home in Warangal district. Reddy, 35, who was also a member of the District Bar Association, had received death threats from police officers in connection with his efforts to defend victims of police torture and to investigate disappearances in Andhra Pradesh. Other members of the APCLC have received similar threats from the police. Reddy was the third member of the APCLC to be murdered since 1985.

U.S. Policy

U.S.-Indian relations historically have been strained over the close ties between the United States and Pakistan, a country with which India has fought three wars. Consequently, although the United States provides India with more than \$100 million in development assistance and other grants and loans, its partisan role in regional South Asian politics has diminished its influence in India. The Bush Administration's decision, on October 1, 1990, to suspend \$560 million in annual economic and military aid to Pakistan, due to Islamabad's nuclear weapons development program, may have helped U.S.-Indian relations, but only temporarily. Strong nationalist sentiment and suspicion about U.S. interests in the region have also contributed to India's tendency to dismiss criticism of its human rights record. Public expressions of concern from the United

States are bitterly denounced by Indian officials and in the Indian press. Nonetheless, it is clear that U.S. influence over such institutions as the World Bank has considerable impact in India. India courts these loans and significant U.S. presence on such institutions could be used to considerable effect. However, to our knowledge, the State Department has not used this influence to press for human rights improvements.

In 1991, U.S. development assistance to India totaled \$20.9 million, funds for P.L. 480 (Title II) food aid totaled \$77.1 million, housing guarantees amounted to \$19 million, and about \$300,000 was spent for the International Military Education and Training program. World Bank loans planned for 1991 totaled \$2.6 billion, of which \$1.85 billion have been approved to date.

Throughout 1991, the Bush Administration raised concerns about human rights abuses by Indian security forces privately with Indian authorities and in occasional public statements.

Such public expressions, which have generally appeared in the form of testimony and answers to questions at congressional hearings, have largely reiterated the generally accurate description of Indian human rights abuses included in the State Department's annual *Country Reports on Human Rights Practices*.

When Assistant Secretary of State for Human Rights and Humanitarian Affairs Richard Schifter was questioned about extrajudicial executions in Kashmir, at hearings on February 26 before the House Subcommittee on Human Rights and International Organizations, he stated that the security forces had used "excessive force" in their efforts to "repress the movement in the area which favors independence for Kashmir." He also acknowledged that acts of violence by militant groups had resulted in extrajudicial killings.

However, when questioned about the Indian government's use of the TADA, Secretary Schifter missed an important opportunity to condemn the act's provisions that suspend safeguards against arbitrary arrest and torture. Instead, he inexplicably chose that moment to congratulate the Indian government as one which "respects individual rights and is not going to misuse a law deliberately." Precisely because public expressions about human rights issues are rare, the Administration should ensure that they are not seen to minimize human rights concerns.

When questioned about extrajudicial killings in Punjab, Secretary Schifter stated that investigations of human rights abuses have taken place "in private for [the] morale...of the security forces" and that the Administration was told that those responsible for abuses had been

punished. In fact, at the time no police officer or other security personnel had been prosecuted for such killings. Schifter also credited the V.P. Singh and Chandra Shekhar governments with taking steps to end encounter killings and contended that "allegations of such killings declined in 1990." To the contrary, Asia Watch knows of no serious measures taken by the Indian authorities to end the encounter killings or evidence that such killings declined in 1990.

In March 7 testimony before the House Subcommittee on Asian and Pacific Affairs, Deputy Assistant Secretary of State for Near Eastern and South Asian Affairs Teresita Schaffer stated that over sixty-five people had died in "terrorist-related activities" in Punjab. The failure to acknowledge that many of those killed are the victims of extrajudicial executions by the security forces created a distorted picture of the human rights situation in Punjab. In Kashmir, she noted the "daily rituals of militant attacks and security forces counterattacks [which] have claimed almost 200 lives." Again, it would have been appropriate to distinguish between the killing of combatants and noncombatants to clarify the severity of the human rights problem.

At a briefing for the foreign press on July 2, Secretary Schaffer was more forthcoming in condemning abuses by both Kashmiri militants and Indian security forces, describing kidnappings by the militants as "abhorrent" and noting the Administration's distress at the "harsh measures" taken by the Indian authorities. Her admonition that "India's democratic tradition would be better served if the Indian government adhered to international norms in maintaining law and order" was particularly welcome.

The Administration appropriately urged the Indian government to permit international human rights organizations to carry out fact-finding missions in India, and Secretary Schifter used the occasion of the February 26 hearing to reiterate this concern. Unfortunately, the Administration did not use the opportunities available to it to address issues on which it could have considerable influence, such as the treatment of activists fighting the Narmada Dam project. The State Department could have called for a review of the project and the suspension of future installments of funds as long as human rights violations, such as the arrests of peaceful protestors, continue.

In Congress, human rights violations in Punjab and Kashmir were the focus of a debate in 1991, sparked by the introduction of a House measure calling for a cutoff of all U.S. development aid if the Indian government did not allow human rights groups access to India. The bill,

sponsored by Representative Dan Burton, was aimed at gaining access for Amnesty International, which has been barred from conducting fact-finding missions in India. An amended version of the bill was adopted by the House on June 19, without the aid cutoff.

The Work of Asia Watch

The severity of abuses in Punjab and Kashmir prompted Asia Watch to send a delegation in late 1990 to investigate and document violations of human rights and humanitarian law by all parties to the conflicts. The findings were published in two reports, *Kashmir Under Siege*, in May 1991, and *Punjab in Crisis*, in August. Asia Watch discussed its concerns about human rights violations in both states with members of Congress during the debate on the House resolution over human rights abuses in India. In September, Asia Watch published a newsletter documenting its findings in the investigation of the killing of ten Sikhs in Pilibhit.

Human rights abuse in prisons throughout India, including widespread torture and deaths in custody, are documented in the March Asia Watch report, *Prison Conditions in India*. A newsletter on an Asia Watch investigation into a number of deaths in custody is scheduled for release in early 1992.

Asia Watch also raised concerns about a number of individual cases of disappearance and torture, including Shahabuddin Gori, a student activist tortured in police custody because of his alleged links to Kashmiri militants. Asia Watch also intervened on behalf of Narra Prabhakara Reddy, who was murdered.

INDONESIA AND EAST TIMOR

Human Rights Developments

Its new membership on the U.N. Human Rights Commission notwithstanding, the Indonesian government continued to violate fundamental rights of its citizens, including the right to life, the right not to be subjected to torture, arbitrary arrest or imprisonment, and the rights to freedom of expression, assembly and association.

Summary executions by the Indonesian army continued to take place in the territory of East Timor. They also occurred in Aceh, the "special region" (as opposed to a province) of 3.8 million people on the northern tip of Sumatra where an independence movement called the Aceh/Sumatra National Liberation Front, more commonly known by its Indonesian name of Aceh Merdeka, has been engaged since 1977 in a low-level armed struggle against the Indonesian armed forces.

In East Timor, between seventy-five and one-hundred people are believed to have been shot dead when Indonesian security forces opened fire on a peaceful demonstration on November 12 at the Santa Cruz cemetery, near Dili, the capital. Thousands had turned a memorial mass for Sebastio Gomes Rangel, a young man killed by Indonesian forces two weeks earlier, into a massive political demonstration in support of independence. The march to the cemetery to lay flowers on Sebastio's grave had finished when hundreds of troops massed there began shooting. The Indonesian government's death toll was nineteen, but no official list of the dead had been compiled by early December, and there were many unconfirmed reports of bodies having been thrown in mass graves. A New Zealand citizen was killed and two American journalists were injured when they were beaten up at the scene by Indonesian troops. The Indonesian military almost immediately sent a team headed by the deputy chief of intelligence to investigate the November 12 killings, and President Suharto, after much international pressure, appointed a second commission headed by a military judge. At the same time, however, official spokespersons were blaming the marchers for the violence. Neither commission could be considered independent. More than 280 people were reported arrested; in December, the Indonesian government acknowledged still holding forty-two. A demonstration by East Timorese students living in Java was held in Jakarta on November 19 to protest the killings. The peaceful protest was broken up by force, and seventy students were arrested. At the beginning of December, twenty-one remained in detention in the Metropolitan Jakarta Police Command without access to lawyers or family, with one man held in solitary confinement.

In Aceh, the current round of ambushes of the police and military by Aceh Merdeka, and retaliatory and "counter-terror" killings by Indonesian security forces, began in mid-1989. Estimates of those killed on both sides over the last two-and-a-half years range from four hundred to over one thousand, but no organization has been able to conduct a thorough, impartial and systematic investigation in the districts most affected. In

late May, when an Asia Watch representative visited the region, the army was exhorting villagers to take the law into their own hands to "exterminate" members of the guerrilla group. In one case reported by the local press on May 21, security forces stood by as villagers lynched two unarmed supporters of the movement. Asia Watch talked to residents who had seen bodies along the road in Aceh and to lawyers representing families whose relatives had disappeared after having been taken into custody by the armed forces. The International Committee of the Red Cross (ICRC) was able to visit Aceh once, in mid-July, to interview persons detained in connection with the conflict, in what was expected to be the first in a series of regular visits by the humanitarian organization, but a second visit has been blocked by the Indonesian military.

Trials of suspected supporters of Aceh Merdeka began in March and are continuing. The trials have been marked by the use of coerced "confessions" and defense lawyers who were warned by the government against making any spirited defense. The government brought to trial only those against whom it believed it had sufficient evidence to convict. Dozens, perhaps hundreds, of others were held in unacknowledged military detention, either to be released in large groups when the military decided that they had not been involved in Aceh Merdeka, or to remain "disappeared." Between September 1990 and October 1991, some 623 people were freed, in five groups, after highly publicized ceremonies in which they were obliged to take loyalty oaths to the Indonesian government, despite not having been convicted of any crime. Most had spent six months or more in incommunicado detention.

A death under mysterious circumstances took place in Irian Jaya, where an armed independence movement is also in place. The Indonesian army reported that it had found Melkianus Salosa, a leader of the Organisasi Papua Merdeka (Free Papua Movement), dead on August 20, 1991. Salosa had reportedly escaped on August 4 from a military-intelligence detention center run by the No. 8 Regional Military Command in Jayapura. A man who had escaped with Salosa who later turned himself in had led soldiers to Salosa's hideout in Aba Gunung, Abepura, Irian Jaya.

Far too many deaths of criminal suspects continue to take place at the hands of the Indonesian police. The usual explanation is that the suspects were shot resisting arrest or trying to escape, and in such cases no action is taken against the police officers involved. In some cases, when deaths appear to take place as a result of torture, police are prosecuted and, if convicted, given lenient sentences. Between July and

September, for example, at least ten deaths of criminal suspects in the course of arrest or interrogation were reported in the Indonesian press. In March, a young man named Beni, detained for the attempted stabbing of a police sergeant, was tortured continuously from 8:00 A.M. to 8:00 P.M. in a police station in North Pontianak, Kalimantan. He was kicked, pistol-whipped and beaten with chains by three police officers until he collapsed and died. A cellmate was warned not to say anything about the incident. The family, however, complained, and the three officers were arrested and went on trial in July. At the close of the trial, the military prosecutor requested three-year sentences for each man.

Indonesians arrested on subversion charges for nonviolent activities received much heavier sentences. On May 23, the Indonesian Supreme Court reversed a reduction in sentence for four men from Irian Jaya accused of distributing T-shirts which bore the flag of "West Melanesia," the name of the state that some independence activists want to establish in Irian Jaya. Yakob Rumbiak, Ik Yoran, Pilemon Kambu and Habel Tanati originally had been given prison sentences of seventeen, thirteen, eleven and nine years by a court in Jayapura. The High Court in Jayapura had reduced the sentences by more than half in August 1990, but the Supreme Court reinstated the initial sentences. The T-shirts had been made in time for December 14, 1989, the first anniversary of the raising of the West Melanesian flag at a sports stadium in Jayapura, the capital. In August 1991, the Supreme Court upheld the prison sentence of eight-and-a-half years that had been handed down in October 1990 for Bonar Tigor Naipospos, a Yogyakarta student. Bonar was accused of possessing books that smacked of Marxist-Leninist teachings and taking part in a study group in which "Marxist" themes were discussed, such as the view that the lot of the Indonesian laborer under the Suharto government is little better than it was under the Dutch colonial regime.

On April 8, Arswendo Atmowiloto, a poet, short-story writer and editor of a tabloid weekly, was sentenced to five years in prison on charges of insulting a religion. The charge was based on his publication of a poll among his subscribers of the leaders they most admired. The Prophet Mohammed came in eleventh in the poll, behind President Suharto, Saddam Hussein and a rock singer. The poll caused demonstrations in many of Indonesia's major cities.

Some thirty-three suspected members or supporters of the banned Indonesian Communist Party remain in prison, including seven sentenced to death. Two men, Rewang, age 63, and Marto Suwandi, age 69, were released on July 24, four years after their sentences had expired. Prison

officials refused to comment on the reasons for the delay, but it was believed linked to the retroactive application of a 1987 presidential decree banning routine reduction of sentences (remissions) for anyone sentenced to a life term or death.

In addition to those formally arrested on subversion charges, many other critics and political opponents of President Suharto or the Indonesian military continue to face restrictions on their civil rights. The moderate opposition grouping known as the "Petition of 50," named after a petition they submitted to President Suharto in 1980 that questioned his authority to decide on certain policies, continued to be banned from traveling abroad and receiving loans from banks. While the Indonesian press covered its activities and demands more thoroughly than at any time in the last decade, members were told that they would have to apologize to the president for the offense caused by their petition if remaining restrictions were to be lifted. In addition, some 17,000 people remain on the Indonesian government's immigration blacklist, many for political reasons. The blacklist prevents them from entering or leaving the country.

In October, as the political atmosphere heated up in anticipation of the 1992 parliamentary election campaign, local authorities in Magelang, Central Java banned four Muslim preachers from giving public religious lectures (*pengajian*). *Pengajian* have often been a forum for sharp critiques of government policy. In another effort to ensure uniformity of political views prior to the 1992 elections, the government required that all those selected as candidates by Indonesia's three legal political parties go through a screening procedure called *litsus* (short for *penelitian khusus*, or special investigation) to determine whether they had any involvement in the 1965 coup attempt which the Indonesian government has blamed on the Indonesian Communist Party. Senior figures in the ruling Golkar party and former Golkar ministers were exempted from the screening.

Although the mainstream press was unusually lively in 1991, formal censorship, if anything, intensified. The attorney general's office banned ten books during the year. One, banned in September, a translation of *Ersatz Capitalism in Southeast Asia* by the Japanese scholar Yoshihara Kunio, was said to contain material which discredited the nation and the president and made invidious comparisons between the latter and former President Ferdinand Marcos of the Philippines. The attorney general's office said another book banned at the same time, entitled *The Gulf War: Islam will Return Triumphant*, could damage Indonesian-Saudi relations because it was critical of the Saudi royal family.

Also in September, an article on the killings in Aceh published in the Bangkok English-language newspaper *The Nation*, drew a formal protest from the Indonesian ambassador in Thailand and a response from the Thai government that it could not place restrictions on Thailand's free press.

The Indonesian government made numerous efforts to restrict freedom of expression about land disputes. In February 1991, in Bengkulu Selatan, villagers were forced to retract a letter they had sent in May 1990 to "Box 5000" (a government post-office box for receiving corruption complaints) about the failure of local officials to resolve a land dispute. Their complaint resulted in an investigation by the provincial government — and subsequent pressure from the officials at fault until the villagers backed down.⁸⁵

In Semarang in February, students were interrogated by the police and copies of a 1991 calendar called "Land for the People" were confiscated because of the way the calendar caricatured officials. It showed President Suharto sitting on and squashing wailing peasants, while his wife was dressed in a bikini and swinging a golf club. Criminal charges against the student distributors were later dropped, but the calendar remained banned.

Freedom of assembly was also restricted. On February 14, security forces broke up a peaceful march on the American, Japanese and British Embassies to protest the Gulf War, and six people were arrested and briefly detained.

Freedom of association for trade unionists became a major issue in 1991. Even as Indonesian Manpower Minister Cosmos Batubara was selected to chair the International Labor Organization's annual conference, the right of Indonesian workers to strike, ostensibly protected by Indonesia's Constitution, continued to be violently suppressed. The military was routinely summoned to end strikes by workers protesting low wages, compulsory overtime, and other violations of Indonesian law. In many cases, military intervention in labor disputes was preceded or followed by interrogations of strike leaders at district military headquarters. Often, the labor leaders involved were coerced into signing letters of resignation. In June, nine workers at P.T. Evershinetex, a textile factory, were reported tortured by District Military Command 061 in Bogor, and five workers at a factory called P.T. DWA were reported

⁸⁵ *Tempo*, March 9, 1991

to have been intimidated and beaten at subdistrict military units in West Jakarta. In August, after the government sent two hundred soldiers to suppress a strike at the tiremaker P.T. Gadjah Tunggal near Jakarta, nine workers were reported to have been detained and intimidated by security forces, and one of them was held for three days. Despite explicit government acknowledgment that wage levels frequently are below the level necessary to support the minimum physical requirements of workers, and despite legal protection of the right to strike, Admiral Sudomo, coordinating minister for general policy and security, and Manpower Minister Batubara continue to assert that strikes are unnecessary. They openly rationalize the use of military force in ending the strikes as a justifiable precaution against public disturbance. At a seminar in Jakarta on October 16, Batubara defended the government's use of troops: "If you go on strike in the streets it will disturb people and neighboring factories. It's the security officers' job to take care of public order."

In June, Saut Aritonang, the leader of the independent Indonesian trade union Solidarity (Setia Kawan), was taken at gunpoint from a taxi, blindfolded and held captive for three days. Although the identity of his captors was unclear to him, a military intelligence source was reported to have said privately during his absence that the union leader was being held by the regional military command. Aritonang said that he had been interrogated about the activities of Solidarity and had been threatened with death should he continue to interfere in the government's development plans. The military publicly denied any involvement in the abduction.

The abduction of Aritonang follows a pattern of military and police harassment of Solidarity members and officials which has plagued the independent union since its founding in 1990. In addition to "preventive questioning" of union members at police centers, the government has declared that it considers the union illegal, implying that it will not tolerate any expansion of the organization. Although freedom to organize is guaranteed by the Indonesian Constitution, the Indonesian government has put in place such onerous labor-union registration requirements that the only union allowed in practice is the government-manipulated SPSI (All Indonesia Workers' Union). A 1987 law requires, among other things, that a union have offices in at least twenty of Indonesia's twenty-seven provinces, with at least one thousand company-level units, before it can bargain on behalf of workers. By intimidating Solidarity, at present the only alternative to SPSI, the government makes it virtually impossible for

the organization to expand to the extent necessary for official recognition. The government's response to Solidarity shows that any stirrings of a free, independent and democratic trade-union movement will be actively suppressed.

The Right to Monitor

Human rights monitoring by domestic organizations was restricted. No Indonesian human rights organization operates in East Timor, in part because permission to do so would almost surely be denied, but also because Indonesian human rights organizations are sensitive to the problems they would have working in a territory where most victims of human rights abuses would feel more comfortable talking to a Timorese priest than to an Indonesian lawyer.

Lawyers from the Medan, North Sumatra branch of Indonesia's largest human rights organization, the Legal Aid Institute, were not allowed to defend any suspected members of Aceh Merdeka; the ban extended to the Medan office's outpost in the town of Lhokseumawe, Aceh. After the article about human rights abuses in Aceh appeared in the Bangkok newspaper, the head of the Medan office of the Legal Aid Institute, who was quoted in the article, was "invited" by the local military commander to army headquarters and criticized about his lack of nationalist feeling.

Following the East Timor massacre, two human rights activists were intensively interrogated in Jakarta, accused of having organized the demonstration of East Timorese students on November 19. H.J.C. Princen of the Institute for the Defense of Human Rights and Indro Tjahjono of the organization INFIGHT were interrogated for eight hours on November 20, not only about their activities in relation to East Timor but also about all of their other human rights work. As of early December, they were having to report to the internal security agency BAKORSTANAS every day, a clear form of intimidation.

U.S. Policy

The United States maintains friendly relations with Indonesia, and the Bush Administration, like the Reagan Administration before it, has been reluctant to criticize the government of President Suharto. Indonesia's support of the allied Gulf War policy and its constructive role in working toward a settlement of the Cambodian conflict may have increased that reluctance.

The Bush Administration goes out of its way to accentuate the positive. In a submission to Congress outlining security assistance requested for fiscal year 1992, the State Department and Defense Security Assistance Agency noted, "The debate over political, economic and social issues is broadening, and the Parliament has somewhat enhanced its dialogue with the Executive. Reports of human rights violations declined in recent years, particularly in East Timor." The request for \$2.3 million for fiscal year 1992's International Military Education and Training (IMET) program, made before the November 12 massacre in Dili, nevertheless came at a time when killings, disappearances, arbitrary arrests and unfair trials in Aceh were making 1991 a very bad year for human rights in Indonesia. The statement noted that IMET "exposes Indonesians to U.S. traditions of democracy, human rights and civilian control of the military." Given what happened in Aceh and East Timor, that exposure seems to have had little influence. Indonesia received \$1.9 million in IMET assistance in fiscal year 1991.

The U.S. Embassy and State Department desk officers have been ready and willing to check on reports of restrictions on human rights monitors, but the State Department generally has not gone far enough to condemn military abuses in Aceh or East Timor. An exception was the reaction to the Dili massacre. On November 13, State Department spokesman Richard Boucher expressed concern over the "tragic loss of life" in the massacre of the day before, although he cited contradictory reports on what had caused the shootings to occur. On November 14, the Administration said it was "gratified" at the announcement of an Indonesian government investigation into the killings, and urged Jakarta to discipline those responsible for using "excessive force." The same day, State Department spokesman Boucher increased the public criticism of Indonesia, saying that "nothing that may have taken place could justify a military reaction of this magnitude, resulting in such a large loss of life by unarmed civilians." The State Department also made a point of summoning the Indonesian ambassador to express concern, and sent

three officials to Dili to investigate the matter for themselves. Given the magnitude of the slaughter, the Administration should have gone beyond these welcome gestures to insist on an international inquiry, to suspend IMET until the results of the investigation were made known, and to resume it only if there were reasons to believe that the military had acted responsibly.

Senator Clairborne Pell, chair of the Foreign Relations Committee, who sharply condemned the massacre and declared that "the violence in East Timor casts serious doubt on Indonesia's ability to be a civilized nation," introduced a resolution calling for a suspension of U.S. military aid to Indonesia under the IMET program. However, the Administration opposed the cutoff in IMET funds, arguing on November 14, in the words of State Department spokesman Boucher, that U.S. training of the Indonesian military contributed to its "professionalism." As ultimately adopted by the full Senate, the Pell resolution urged an immediate reassessment of the IMET program, as well as U.S. support for investigations into the atrocity under United Nations auspices. In a letter to Secretary of State James Baker, Senator Patrick Leahy, the chair of the Senate Appropriations Subcommittee on Foreign Operations, indicated that he would propose a prohibition on any military assistance to Indonesia for fiscal year 1992 if the Indonesian government failed to conduct a full investigation and punish those responsible.⁸⁶

House members were also outspoken in condemning both the October 28 shooting and the massacre on November 12. Ranking members of the House Foreign Affairs Committee urged the Indonesian government to "hold accountable those military personnel responsible...and release immediately those who were arrested on November 12 for their participation in a peaceful funeral procession." The Committee approved a measure similar to the one passed in the Senate, specifically urging the Administration to make future IMET funding contingent on the outcome of the Indonesian government's investigation.

The State Department was notably lukewarm about pressing for access by the ICRC to Aceh or criticizing the military for failing to allow

⁸⁶ The Senate bill was adopted on November 21. Senator Leahy wrote to Secretary Baker on November 20: "The U.S. Government should make it absolutely clear that there must be a thorough, prompt and credible investigation if an assistance relationship with Indonesia is to be maintained."

a second visit. Assistant Secretary of State for Human Rights and Humanitarian Affairs Richard Schifter noted in written response to congressional questions that there was nothing to suggest human rights violations on a "massive" scale in Aceh.

The Work of Asia Watch

Much of Asia Watch's work during the year focused on the human rights violations in Aceh. A report issued in late December 1990, *Human Rights Violations in Aceh*, was widely covered by the international press in January and was used by diplomatic circles in Jakarta to press the Indonesian government to allow the ICRC into Aceh. A follow-up report, based on a visit to Aceh and Malaysia (where some Acehnese involved in the conflict have fled) in late May and early June, was issued in mid-June and also was widely covered by the press. The second report was used in a campaign to persuade the Malaysian government not to deport boat people from Aceh whose return had been requested by the Indonesian government. As of December, some two hundred refugees had been permitted to stay in Malaysia.

Following the May-June visit to Aceh, Asia Watch met with the Australian foreign minister and other senior government officials in Canberra to raise concerns about the human rights situation there. Asia Watch staff also met with senior staff of the Indonesian Embassy in Washington to discuss human rights violations in Aceh.

After the killings in East Timor on October 28, Asia Watch wrote the U.S. Embassy in Jakarta, urging it to press for an investigation. After the massacre two weeks later, Asia Watch helped to disseminate information on developments through an international network of human rights organizations, and sent a statement outlining what an independent, impartial investigation should consist of to every major newspaper in Jakarta. After East Timorese demonstrators were arrested in Jakarta on November 20, Asia Watch sent a formal letter of protest to Foreign Minister Ali Alatas. A major report on the killings and their aftermath was issued on December 12, in cooperation with the Human Rights Council of Australia.

Short reports were also issued during the year on freedom-of-expression cases, such as the calendar with the caricatures of government officials and the trial of the newspaper editor who conducted the poll of his readers.

In late October, Asia Watch formally requested permission to visit Indonesia and East Timor and hold talks with senior government and military officials in both places. There was no response by the end of the year.

JAPAN

Human Rights Developments

Asia Watch in 1991 directed its attention in Japan to the treatment of Chinese dissidents and the use of Japanese economic and diplomatic leverage to promote human rights in Asia. Our primary concern continued to be Chinese dissidents who were in Japan at the time of the June 4, 1989 crackdown in Beijing or who later fled to Japan.⁸⁷ Although the Japanese government promised at a 1989 summit of industrial nations in Paris that it would offer refuge to dissidents who feared persecution if returned to China, it has not granted political asylum to a single Chinese dissident. Instead of offering blanket coverage to those wishing to review their visas, the government adopted a case-by-case approach and left it to immigration officials to make the decisions. With one prominent exception, the government did display more flexibility in dealing with Chinese visa applicants whose cases became the subject of international publicity and domestic pressure.

The exception was the case of Lin Guizhen, a democracy activist from Fujian Province who entered Japan in September 1989 and was forcibly repatriated to Shanghai on August 14, 1991. The deportation came on the last day of a high-profile visit to Beijing by then-Prime Minister Toshiki Kaifu. Lin was sent back despite two lawsuits pending in the Japanese courts related to her claim for refugee status. Sixty-one

⁸⁷ According to Japan's Justice Ministry, 2,844 Chinese have arrived illegally in Japan since the Beijing massacre. Of these, 2,381 have been deported. In addition, it is estimated that there were approximately 15,000 Chinese students studying in Japan at the time of the massacre. Another 48,000 were in language schools -- the largest number in any country outside of China.

other Chinese deemed to be "economic refugees" were deported simultaneously.

Lin claimed that she had participated in pro-democracy demonstrations in Fukishu city in June 1989 and then fled from China in a boat with 230 other Chinese. Upon arrival in Japan, she applied for political asylum. Her application was rejected in June 1990 as was a subsequent appeal, despite her lawyers' argument that she was in danger of persecution in China. She was deported after the Supreme Court upheld a lower-court decision, although further appeals were still pending.⁸⁸ Lin's sudden deportation provoked an international outcry.⁸⁹ Japanese civil liberties groups complained to the United Nations High Commissioner for Refugees (UNHCR) that Japan's action had violated the 1951 Refugee Convention, which Japan ratified in 1982.⁹⁰

Asia Watch protested the deportation and urged Japan to monitor Lin's welfare after her return to China. Japanese authorities have cited assurances from Chinese officials given to their Embassy in Beijing. A letter to Asia Watch from the Japanese Embassy in Washington stated

⁸⁸ Lin was deported after a Supreme Court ruling on October 9, 1990 upholding a lower-court interlocutory decision rejecting her appeal for suspension of deportation. However, at the time of her expulsion, two lawsuits were still pending at the district-court level, one seeking cancellation of the deportation order and the other pressing her application for refugee status. Her attorneys have indicated that they intend to pursue the matter in her absence.

⁸⁹ For example, *The New York Times* gave her deportation prominent coverage. Steven Weisman, "Japan Depports Chinese but Others Are Hopeful," August 18, 1991.

⁹⁰ Under Article 35 of the convention, Japan is obligated to cooperate with the UNHCR. In 1987, the Executive Committee of the UNHCR recommended that an applicant "should be permitted to remain in the country while an appeal to a higher administrative authority or to the courts is pending."

The UNHCR's role in the case is unclear. Justice Ministry officials say that the UNHCR interviewed Lin and found her unqualified for refugee status. But in a Tokyo news conference on August 20, Sadako Ogata, the UNHCR commissioner, expressed concern about the precipitous action taken by the immigration authorities.

that the Chinese government had reported that "soon after Lin arrived in Shanghai, she was taken by her family and she is now living peacefully with them." The same letter also declared, "No legal action against her has been taken by the Chinese government." Similar statements have appeared in the Japanese press. However, it has been impossible to verify China's assurances independently. The Japanese government has indicated that it intends to monitor Lin's status periodically, but there is no indication that it has access to her.

In June 1991, Japan shifted its method of dealing with a number of cases of Chinese living in the country prior to June 1989. For the first time, a provision in the immigration law under which a person may be granted legal residency status "by reason of special circumstances" was applied to Chinese dissidents.⁹¹ The visa is given for six months at a time and is renewable; although it does not specifically permit the person to work, those who obtain it generally have been allowed to seek employment. The government granted this status to Chen Shisen, a student living in Tokyo since September 1987 who feared persecution in China because of his pro-democracy activities as a member of the Japanese branch of the Federation for Democracy in China (FDC).

On October 9, 1991, a visa was granted under the same provision to Zhao Nan, a prominent Chinese dissident who had been denied political asylum on March 7. Zhao asserted that he was at risk of "brutal punishment" if returned to China against his will, both because he was president of the FDC chapter in Japan and because he had been politically active in China beginning in 1978. Following the arrest of Democracy Wall activist Wei Jingsheng in 1979, Zhao had edited Wei's pro-democracy journal. For his peaceful political activities, Zhao was imprisoned without trial in a Chinese labor camp from 1982 to 1984. He came to Japan in September 1988 and had his visa renewed three times before a renewal request was denied and immigration authorities ordered him to leave the country late in 1990. Despite his well-founded fear of

⁹¹ Under the so-called "designated activities" clause of the Immigration Control and Refugee Act of 1990, residency status may be granted "due to special circumstances that have developed in the country of his nationality." The grounds on which this status is given are extremely vague. The provision effectively allows immigration officials to grant extended visas to certain individuals without categorizing them as political refugees or extending blanket visas to entire categories of people.

persecution, the Justice Ministry refused to grant him political asylum on narrow technical grounds, asserting that he had missed a filing deadline. A lawsuit filed in June 1991 challenging the decision is still pending.

A lawyers group working on behalf of Chinese students issued a public appeal following the decision in Chen's case, urging the government to grant the same status to at least twenty-two other dissidents they represented. The lawyers had lobbied the Justice Ministry and petitioned publicly on the students' behalf, and the government's action on Chen was viewed in part as a response to the pressure they had generated.⁹² By the end of November, fourteen people had been given such status.

It is unclear whether this special status will be extended indefinitely and how broadly it will be applied. This uncertainty is a product of the Japanese government's conflicting desires to avoid both offending the Chinese government by granting formal asylum — with the implicit statement that a well-founded fear of persecution has been demonstrated — and incurring the international criticism that has attended its return to China of dissidents who are likely to face such persecution.

Japanese Foreign Aid and Human Rights

In 1991, Japan began to address the question of how it might effectively use its economic power as one of the world's largest aid donors to exert a positive influence on behalf of human rights, especially in Asia. For the first time, government officials at the highest level spelled out criteria for Japan's Official Development Assistance (ODA) program that included an emphasis on human rights.⁹³

⁹² The Lawyers' Group for Protecting Human Rights of Chinese Students is headed by Hideo Fuji, a former president of the Japan Federation of Bar Associations.

⁹³ In 1989, Japan became the world's largest donor of official foreign aid, disbursing over \$8 billion. In 1990, ODA loans and grants totaled over \$9 billion but, due to exchange rate fluctuations, Japan ranked second in the world, after the United States; approximately two-thirds of the Japanese funds went to Asian countries. Figures for 1991 are not yet available.

On April 10, Prime Minister Kaifu gave a speech in the Diet — the Japanese parliament — in which he said that Japan's ODA policy would take into consideration the recipient countries' "efforts for promoting democratization and...securing basic human rights and freedom," as well as other criteria such as the volume of arms sales and imports.⁹⁴ A similar point had been made in February by Japan's delegate to the U.N. Human Rights Commission in Geneva, who declared that "as a nation that regards freedom and democracy as goals toward which all countries should strive, Japan...cannot remain insensitive to the human rights situation of a recipient country."

Depending on how it is applied, the new ODA policy could move Japan toward making an enormously significant contribution to enhancing human rights protection in Asia. But in implementing the policy thus far, Japan's actions regarding two important countries, Burma and China, have been inconsistent.

In its 1990 Annual Report, published in March 1991, the Ministry of Foreign Affairs pointed to Burma as an example of a country in which Japan's aid had been "appreciably affected" by the 1988 democratization movement and by the subsequent military crackdown. In fact, Japan had used its aid program to send decidedly mixed signals to the military government in Rangoon, apparently trying to maintain good relations while exerting some pressure on behalf of human rights and political reform.

In July 1991, the Japanese Foreign Ministry said that it would continue to restrict economic ties with Burma by not approving any new

⁹⁴ Although it was announced in 1991, the new ODA policy had been under consideration at least since 1990. A Foreign Ministry "white paper" on ODA was circulated internally in October 1990 and published in the ministry's 1990 Annual Report. It referred to sweeping reforms in Eastern Europe and their "major influence on freedom and democracy movements in other parts of the world." The white paper quoted a policy statement of the Development Assistance Committee of donor nations on the "vital connection between open, democratic and accountable political systems and individual rights and the effective and equitable operation of economic systems." The white paper provided no hint of how the policy would be implemented other than to say: "The extent to which Japan emphasizes such political values as democracy and respect for human rights in its aid activities from now on is a question that will need to be debated in depth, taking into account the fact that the processes of democratization may vary from country to country."

ODA assistance beyond what was committed prior to 1987. The ministry said this policy would remain in effect until principal opposition leader Aung San Suu Kyi was released from house arrest, basic human rights were respected, and a transfer to civilian rule was completed. However, in 1989 Japan resumed disbursement of aid-related projects which had been approved prior to 1987.⁹⁵ In its July statement, the Foreign Ministry rejected any suggestion that Japan impose further economic sanctions, including trade sanctions on Burma, as the United States had done.⁹⁶ But toward the end of 1991, there were indications that Japan might consider adopting a sanctions policy. Michio Watanabe, who was appointed foreign minister by the new prime minister, Kiichi Miyazawa, urged Rangoon to make human rights improvements and respect the May 1990 election results or "they will duly have no alternative but to suffer sanctions from the international community."⁹⁷

In regard to China, Japan's aid policy in 1991 seemed to be directly at odds with its pronouncements on ODA and human rights. Tokyo decided in September to provide 130 billion yen (\$965 million) of ODA for the year ending March 31, 1992. This money was part of an 810 billion yen infrastructure loan package agreed to in 1988 for the fiscal years 1990 to 1995. Until November 1990, the loans had been frozen in conjunction with a package of economic sanctions imposed by the Group of 7 industrial countries.

The decision on funding followed an August 10-13 trip to Beijing by Prime Minister Kaifu, the first by the leader of a major industrial power since the June 1989 massacre. During the visit, Kaifu announced the Japanese government's plans to give the desperately needed loans, repeating his assertion (made in various international fora over the past two years) that Japan was anxious not to "isolate" China. In a meeting with Chinese Prime Minister Li Peng, Kaifu mentioned that the international community had a strong interest in seeing respect for human rights in China. He reportedly added: "I hope you will introduce

⁹⁵ This included five continuing-grant projects totaling 9.2 billion yen, of which sixty-five percent had already been disbursed, and nineteen loan projects totaling 125 billion yen, of which only twenty percent had been paid out.

⁹⁶ Kyodo, July 22, 1991.

⁹⁷ Kyodo, November 5, 1991.

reforms in the political field as well as the economic field.⁹⁸ Whatever impact this mild rebuke on behalf of human rights might have had on China's leaders was outweighed by the international legitimacy bestowed on them by Kaifu's visit and the promise of further aid without specific human rights conditions attached.

The Right to Monitor

Human rights groups in Japan function freely and without government restriction or harassment.

U.S. Policy

Asia Watch urged the U.S. Embassy in Tokyo to express concern to Japanese authorities about the specific cases of Zhao Nan and Lin Guizhen, as well as the broader issue of Japan's international commitments regarding Chinese dissidents. Although no public U.S. statement was made, U.S. officials in Japan told Asia Watch that the Japanese government was well aware of the strong views of the U.S. government on this subject and that the United States would continue to emphasize that no one with a well-founded fear of persecution should be forcibly returned to China.

The Work of Asia Watch

Asia Watch sent a delegation to Tokyo in February 1991 to continue a dialogue begun the previous year with government officials, nongovernmental organizations, representatives of the business community and others regarding Japan's domestic and foreign human rights policies. Following the mission, Asia Watch representatives met with Japanese Embassy officials in Washington to discuss the issues raised in Tokyo.

In May, two prominent members of the Japanese Diet visited Washington, and Asia Watch helped to arrange meetings with members

⁹⁸ Kyodo, August 10, 1991.

of Congress on a range of issues including human rights. The same month, a U.S.-based official of the Japanese Overseas Economic Cooperation Fund, the agency which handles the ODA program, met with Asia Watch as part of an investigation ordered by the Ministry of Foreign Affairs. The inquiry was sparked by a Japanese media account of an Asia Watch report citing Chinese government documents that referred to a fiscal year 1988 ODA loan to China used for technological improvements at a prison factory involved in exports. The factory had been identified by Asia Watch as one using forced labor to make products for export. The Japanese Embassy informed Asia Watch of the results of its inquiry in December.⁹⁹

Later in the year, summaries of several Asia Watch reports were translated into Japanese and distributed to policymakers, nongovernmental organizations and media contacts in Japan.

MALAYSIA

Human Rights Developments

Detention of individuals without formal charge or trial under the Internal Security Act (ISA) continued in Malaysia in 1991. At least seven of those in custody under the ISA were detained for the peaceful expression of their political views. All were associated with a political party that had run afoul of Malaysian Prime Minister Mahathir Mohamad.

⁹⁹ The Embassy stated that according to Chinese officials, the Japanese loan was re-extended to the Xin-Sheng (New Life) Sewing Factory for the purchase of new machines. The factory, it said, is part of a group of four "final user" factories, in which "no convicts of any offense, political or otherwise, are working." The April Asia Watch report quotes Chinese government documents describing this group of factories as a joint venture combining manufacturing and trading, in which a prison enterprise, the New Life Cotton Mill, is the leading component and export arm.

The ISA enables any police officer to detain without warrant anyone deemed likely to pose a threat to the security of Malaysia. Those newly detained can be held initially for sixty days, and the minister of home affairs has the authority to extend the detention orders for up to two years, renewable indefinitely, all without charge or trial. Prime Minister Mahathir is also home affairs minister.¹⁰⁰ A June 1989 amendment passed by the Malaysian Parliament further stripped political detainees of legal recourse by abolishing judicial review of habeas corpus petitions by ISA detainees. A New York City Bar Association report said that "Prime Minister Mahathir has acknowledged that the bill was intended to strengthen the hand of the executive personnel, lest they become too 'wary' of detaining people under the ISA."

After the detention under the ISA of four opposition party members from the eastern Malaysian state of Sabah in 1990, three more individuals were detained in 1991 and accused of participating in a plot "to take Sabah out of the Malaysian Federation." One of the three was released after sixty days; the other six remain in detention.

In January, Deputy Home Minister Megat Junid told the Malaysian Parliament that 142 people were then in detention under the ISA. Reasons for detention included alleged communist activities, religious extremism, and suspected participation in "Operation Talkak," the phrase used to refer to the alleged plot to secede Sabah from Malaysia.

Those detained under the ISA in 1991 were Maximus Johnity Ongkili, detained on January 3 and later released; Vincent Chung, former manager for administration and personnel of the Sabah Foundation, an organization devoted to the economic and social development of Sabah, detained on January 19; and Jeffrey Kitingan, director of the Institute for Development Studies and an outspoken proponent of increased state administrative autonomy, detained on May 13. On July 17, Deputy Home Minister Megat Junid announced to the press that Kitingan's detention order had been extended for two years on instructions from Prime Minister Mahathir.

In addition to Kitingan and Chung, those still in custody since their detention in 1990 are Damit Undikai, detained on May 18, 1990; Benedict Topin and Albinus Yudah, both detained on May 25, 1990; and

¹⁰⁰ For a detailed analysis of the ISA, see Beatrice S. Frank et al., *The Decline in the Rule of Law in Singapore and Malaysia*, (New York: Association of the Bar of the City of New York, 1990).

Abdul Rahman Ahmad, detained on July 7, 1990. Of the two sets of ISA detainees still being held for their peaceful political views, five are in custody in the Kamunting Preventive Detention Camp in Taipin, Perak, while one, Topin, has been transferred to Kuala Lumpur.

The seven Sabah detainees were all connected directly or indirectly with the United Sabah Party (Parti Bersatu Sabah or PBS), a political party dominated by Kadazans, a largely Christian indigenous group. It has been on a collision course with Kuala Lumpur, demanding readjustment of federal-state relations, a greater share of Sabah's revenue, more administrative autonomy, and the expulsion of illegal Filipino and Indonesian immigrants.

Asia Watch was also concerned about the government's threat to curtail the independence of the Malaysian Bar Council, a professional association of 2,600 lawyers which has long been outspoken in promoting human rights and judicial independence in Malaysia. In November, members of the governing political coalition, United Malays National Organization (UMNO), which holds over two-thirds of the seats in Parliament, announced that the coalition was contemplating amendments to the Legal Profession Act of 1977, which governs the Bar Council. The amendments would have removed a provision of the act that assigns the Bar Council the duty to act in defense of justice, effectively prohibiting the Bar Council from speaking out on issues of public concern, in violation of its members' right to the freedoms of expression and association. Another amendment would have allowed the government, rather than the Bar Council itself, to discipline individual members of the bar. UMNO leaders indicated that the government would use this new power to "blacklist" lawyers who are critical of the government or judiciary. Following considerable domestic and international controversy over the proposed amendments, the government announced that it had never intended to enact them.

Government officials continued to promote an "Asian approach" to human rights as a way of diluting "Western" criticism of human rights violations. In a speech to the U.N. General Assembly in September, Prime Minister Mahathir asked, "Can only the preachers have the right to interpret democracy, to practice it as they deem fit, and to force their interpretation on others?" He was reacting in particular to a report of the U.N. Development Program, released in May, which contained a "human freedom index" ranking Malaysia on the same level with Haiti and Zambia in terms of protection of human rights. Unfortunately, Mahathir's interpretation of democracy seems to allow arbitrary detention of political

opponents and official intolerance for independent institutions like the Bar Council, which seek to defend the rule of law from governmental attack.

The government's treatment of asylum-seekers was also a cause for concern. In October, the government announced its intention to repatriate some two hundred refugees from Aceh, Indonesia, in violation of the international prohibition of *refoulement*, despite evidence that they face a substantial risk of persecution at home. All two hundred were being held in Malaysian prisons, but the Malaysian government refused to permit representatives of the U.N. High Commissioner for Refugees (UNHCR) to visit them to evaluate their asylum claims. A Malaysian Embassy official said that the government had set up an agency to assess their claims, but refused to release details about individual claims on grounds that it was an "internal matter." In its agreement with Indonesia, the Malaysian government failed to exert pressure for a guarantee of the safety of the returnees, twenty-four of whom already had been sent back by the end of the year. The government also continued to deny Vietnamese boat people permission to land in Malaysia, without any attempt to determine whether they had valid asylum claims or to ensure that they could find alternative refuge.

The Right to Monitor

Human rights advocacy continued to be difficult in Malaysia, where the government persisted in denying a license to a would-be human rights organization. No organization can operate in Malaysia without such a license.

Individual lawyers, and the consumer advocacy organization Aliran, continued to monitor human rights. Lawyers reported occasional harassment. There were no arrests.

U.S. Policy

The Bush Administration issued no public criticism of the Malaysian government's human rights record in 1991. The U.S. Embassy in Kuala Lumpur did respond to Asia Watch concerns regarding the status and treatment of the Acehnese detainees, and State Department officials have privately expressed support for Asia Watch appeals. But the U.S.

government has refrained from using its own voice in lodging criticisms. For example, a U.S. Embassy official told Asia Watch that the Embassy had not clearly requested UNHCR access to the Acehese detainees because of the "sensitive nature" of the issue.

The Administration's influence on Malaysia is small. Prime Minister Mahathir has been quoted as calling the United States "racist," and the U.S. government's contribution in foreign and military aid is negligible. The Administration requested \$1 million in fiscal year 1991 for the International Military Education and Training (IMET) program, but the Senate cut the aid to zero as a protest against the Malaysian government's refusal to grant temporary asylum to boat people from Vietnam. The Administration's request for fiscal year 1992 stands at \$1.1 million for IMET.

The Administration missed an important opportunity to press for respect for freedom of association in the country's electronics industry, where unions are currently prevented from forming. A petition on labor rights in the electronics sector was filed in May with U.S. Trade Representative (USTR) Carla Hills by the International Labor Rights Education and Research Fund, pursuant to Section 502(b)(8) of the Trade Act. The USTR rejected the petition in August, refused to conduct an inquiry, and offered no explanation of her decision. Thus Malaysia, despite its poor labor rights record, escaped scrutiny of its practices, notwithstanding U.S. law specifically requiring that recipients of trade benefits under the Generalized System of Preferences uphold labor rights standards, including freedom of association.

The Work of Asia Watch

In 1991, Asia Watch documented Malaysia's continuing abuses under the ISA, publishing a newsletter, "Malaysia: Detainees in Sabah," in October. It also pressed the Malaysian government to release the six Sabah detainees, and called on the Malaysian Parliament to review the ISA with a view toward repeal.

In October, Asia Watch met with U.S. State Department and Malaysian Embassy officials to discuss concerns about the possible forcible repatriation of the Acehese detainees. Asia Watch appealed unsuccessfully to the Malaysian government to allow international parties to visit the detainees to assess their individual asylum pleas.

Asia Watch did receive a reply from the Malaysian government that

no Acehnese would be returned against their will, although the government continued to deny access to detainees by the UNHCR which might have verified that this assurance was met.

In November, Asia Watch appealed to the government to halt its effort to restrict the independence of the Bar Council. The effort to silence this leading independent institution was documented in a newsletter, "Malaysian Government Moves to Stifle Independent Bar," published that month.

PHILIPPINES

Human Rights Developments

The Philippine government's human rights record in 1991 was mixed. According to both the government's Commission on Human Rights (CHR) and nongovernmental human rights groups, violations declined on all fronts. But reports of abuses, including disappearances, extrajudicial killings, incommunicado detention and warrantless arrests, continued. A 1990 law permitting warrantless arrest of suspected subversives continued to be used to arrest suspected members of the rebel New People's Army (NPA), some of whom were held for weeks in solitary confinement and tortured.

Government forces were not alone in committing abuses. The NPA, the armed wing of the banned Communist party, continued to kill members of the military, police, other paramilitary forces and civilians in situations outside of combat. As in the past, there were reports of execution-style killings of police and off-duty military officers by rebel hit squads, the so-called "sparrow units," seeking to steal the victim's gun. Typically, a rebel in civilian clothing approached a victim and shot him at close range. Apart from the humanitarian-law violation inherent in targeting people who often were performing no combat function, the disguising of NPA combatants as civilians served to blur the distinction between the two and increased the likelihood of abuse of civilians.

On September 28, in Lawaan in eastern Samar province, insurgents were reportedly responsible for a massacre of seven civilians riding in a police car, including the mayor. In October, the NPA in northern Luzon island admitted for the first time in a press statement that it had been

holding an American hostage, Arbie Duane Drown, since his disappearance in Cagayan province a year before.

Legal and legislative developments in 1991 were for the most part encouraging. The government enacted several reforms reflecting the recommendations of numerous national and international human rights groups, particularly those of the U.N. Working Group on Enforced or Involuntary Disappearances, which issued its report on the Philippines in January.

In June, President Corazon Aquino signed a bill repealing Presidential Decree 1850, an enactment of the martial law era, and concurrently signed into law an act assuring civilian-court jurisdiction over military personnel in cases involving offenses against civilians. The repeal of Presidential Decree 1850 was a major victory for human rights groups in the Philippines, which together with a majority of legislators had been clamoring for its repeal since President Aquino took office in 1986. The decree had given military courts jurisdiction over cases involving all military personnel, including those accused of human rights offenses against civilians.

Still, military impunity remained a problem in 1991, even in the most visible cases. In a widely publicized case in February, fifteen soldiers were acquitted of charges of having massacred nineteen civilians in November 1990 in New Passi, Sultan Kudarat, despite eyewitnesses and physical evidence that strongly linked the unit to the massacre. Reports by the government's Commission on Human Rights had strongly implicated the military, and a doctor presented evidence showing that the victims had been shot in the back at point-blank range. As in other cases, eyewitnesses who had submitted signed affidavits failed to come forward at the trial, reportedly because of fears for their own security.

The right to be protected against arbitrary arrest remains seriously eroded. Since July 1990, the Supreme Court has permitted warrantless arrest not only of rebels but also of those suspected of being Communist Party members, on the grounds that membership in a banned organization may be considered a "continuing crime."

Numerous reports suggest that the military has used the court's ruling to arrest suspects in the absence of strong *prima facie* cases against them. Arrests reportedly often followed by incommunicado detention, during which forcible attempts are made to extract confessions. Philippine human rights groups assert that the incidence of warrantless arrests has risen since the decision, and that the military also routinely plants weapons on suspects to legitimize otherwise weak cases of alleged

subversion.

In one instance on August 21, Roberto Roldan, a freelance filmmaker and Marcos-era detainee, was arrested without a warrant while reportedly shopping at a mall in Quezon City. Roldan said that the military held him incommunicado for a week and forced him to make a confession at gunpoint. Only after a delay of two weeks was he officially charged with subversion and possession of a firearm, which he claimed had been planted. He remained in custody at the end of the year.

There were continuing reports of disappearances in 1991. In several cases, witnesses identified the abductors as members of the military, the police or Civilian Armed Forces-Geographical Units (CAFGU), the official paramilitary organization. In one case, a member of a militant peasant's organization disappeared after he was taken into police custody. Local human rights organizations said he had been arrested because of his activities as a farmers' organizer.

Amnesty International (AI) reported that Renato Tabasa Zabate was abducted by a group of armed men on September 8 and was still missing at the end of the year. In 1990, members of Zabate's organization, the United Farmers Organization, were reportedly subjected to harassment by military forces for being suspected supporters of the New People's Army. AI believed that Zabate, whom military agents had detained once before in an unofficial "safehouse" in 1987, was still being held at the Cebu Metropolitan District Command Headquarters of the Philippine National Police, at Camp Sotero in Cebu City.

Extrajudicial killings by government forces continued in 1991. As in the past, most of the victims were peasants, poor urban squatters and labor-union activists, in Negros Occidental, Cebu and Mindanao. A June report by the International Federation of Human Rights described several such killings. In one, in Negros Occidental province in February, Enrico Perolino, a farmworker who had fled military operations in his rural village, was reportedly dragged out of an evacuation center in Bacolod and shot dead in full view of his son. The perpetrator, a CAFGU member, was identified by name by the son. The alleged murderer has not been discharged, although an investigation has been initiated by the CHR.

Individuals with outspoken political views were also victims of targeted killings. In January, according to Amnesty International, two armed men in Negros Occidental province assassinated Father Narciso Pico, a parish priest of the Philippine Independent Church who was well known for his advocacy of human rights and land reform. Before his death, Father Pico had been repeatedly warned that the military had

targeted him as a suspected communist sympathizer. Information collected by local and international monitors pointed to CAFGU members or members of an unofficial paramilitary group as the perpetrators.

For the first time under the Aquino government, local human rights and environmental organizations reported that environmental activists were becoming targets of military abuse. Henry Domoldol, chair of a community association pressing to keep forests under tribal management, was shot dead on July 26, as he was coming out of his home in Kopis, a village in the town of Conner in the northern province of Kalinga-Apayao. Witnesses, including two of his sons, identified the gunmen as members of the Philippine Army and CAFGU.

In another case, a priest who had been active in promoting the arrest of illegal loggers in his parish was shot dead with impunity by military agents apparently protecting an illegal logger. On October 14, the Reverend Nerilito Satur, parish priest in Valencia, Bukidnon, was shot fifteen times and his skull was crushed with rifle butts by three masked men. The bishop of the diocese and the regional Department of Environment and Natural Resources charged a military colonel from Cagayan de Oro, a local sergeant, and three paramilitary men with the planning and execution of the killing. Although warrants have been issued for the arrest of the five since October 30, they remain free because the police reportedly fear a "confrontation."

Human rights lawyers also continued to be victims of harassment and death threats, apparently from military-linked groups. In one case reported by a national coalition of human rights lawyers, surveillance was a precursor to an assassination attempt. On July 17, Vidal Tombo, a human rights lawyer who handles cases of political prisoners and NPA suspects, was injured in front of his home when two men jumped out of a red jeep and started firing on him and his friends with Armalite rifles. Tombo reportedly recognized the red jeep as the same one he recalled from earlier surveillance.

The enforcement of human rights laws continued to be a problem in 1991. The Commission on Human Rights, which is empowered to investigate cases but not to prosecute them, remained ineffectual. From the CHR's founding in 1987 through the middle of 1991, only four out of hundreds of military personnel accused of human rights abuses had been convicted.

There were also disturbing reports questioning the impartiality and accuracy of the CHR. In one case in February, AI reported that five men were abducted by elements of the 24th Infantry Battalion of the

Philippine Army in Angeles City, Pampanga province, apparently on suspicion of being NPA supporters. According to an AI report in March, three of the victims were held incommunicado for at least one month. AI reported that two of the three, Manuel Capitulo and Antonio Bondoc, had been severely beaten, suspended in the air and thrown into a grave with hands and feet chained. The two were released one month later.

When the CHR issued a report on its investigation into the case in April, it suggested that Capitulo had never disappeared and that local human rights organizations were simply fabricating the case. Stating that Capitulo "is alive and did not actually disappear," the CHR reported that an investigator had found Capitulo at his sister's house more than one month after the abduction. It also questioned "the integrity and veracity" of a habeas corpus appeal issued on behalf of the three men on February 11, at a time when they were being held in unacknowledged military custody. This is disturbing in light of past statements by CHR chair Mary Concepcion Bautista, who in 1988 charged human rights groups with being anti-government, lending credence to military red-labeling and making human rights activists targets for political violence.

The Presidential Human Rights Committee, a cabinet-level consultative body created by President Aquino in December 1988 as a response to the problem of involuntary disappearances, eclipsed the CHR in 1991 by launching several high-profile efforts to investigate human rights cases. The committee was sharply critical of counterinsurgency operations in northern Luzon, and recommended several new legislative and judicial measures on human rights. With representatives from nongovernmental human rights groups, the military and the Justice Department, the group carried authority which the CHR lacked.

Pushed by the committee, the government enacted new guidelines governing the treatment and conditions of release for detainees. It is too soon to tell whether the regulations have prevented disappearances or extrajudicial killings of political detainees, but the reforms appear promising. A memorandum of agreement signed in May states that detainees must be released to a member of the CHR, an attorney chosen by the detainee, or a respected member of the community. It also calls for the creation of an official logbook, open to public inspection, listing those detained and released. Failure to observe the regulations places legal liability squarely on official custodians if a detainee disappears or is killed.

In an attempt to promote prosecution of human rights offenders, the legislature enacted a new, more comprehensive witness protection

program, the Republic Act 6981. The program promises housing, job assistance and burial expenses to witnesses agreeing to testify in cases of major crimes, including human rights cases. In August, the Senate offered protection to witnesses of alleged killings and sexual abuse by soldiers in Marag Valley, Kalinga-Apayao province. In the past, fear of retaliation has prevented many witnesses from testifying in human rights cases, making prosecution of offenders difficult.

Asia Watch was encouraged by an April 4 Presidential memorandum governing promotions of the roughly 12,000-member Armed Forces officer corps. Since 1987, the CHR has been permitted to review the human rights record of officers proposed for promotion. The memorandum adds the requirement that the candidate for promotion have no complaint or pending case against him before the CHR.¹⁰¹

Asia Watch found much cause for concern in the military's increasing reliance on paramilitary CAFGUs in combat operations and attacks on suspected leftists. CAFGU members as well as unofficial "vigilante" groups continued to be implicated in a significant proportion of human rights abuses. The military had stepped up recruitment to increase CAFGU forces by an additional ten thousand in 1992.

The continued reliance on private funding of the CAFGUs in Mindanao was especially disturbing. The so-called "Special CAFGU Active Auxiliaries" carried the seal of government approval, but were funded by private landowners and commercial and logging interests, some of whom have used private armies in the past to silence dissent and discourage unionization among workers.

Military red-baiting of legal grassroots organizations continued in 1991, particularly in Davao and Cebu cities, where such assertions by military officials were again aired in the news. In the past, the taint of communist involvement led to acts of violence against members of legal organizations, particularly militant peasants or workers groups, whose main crime appeared to have been their critical view of government policies.

At the end of 1990, the Congress passed a police reform law that disbands the Philippine Constabulary, a paramilitary branch engaged in counterinsurgency operations which was responsible for serious human rights abuses during the Marcos years and under the Aquino government, and gives its members the choice of transferring to the police or military

¹⁰¹ *Philippine Daily Inquirer*, July 30, 1991.

forces. Most members reportedly chose the police, but they were not required to participate in professional retraining. It is not clear how a police force, which the same law assigned combat functions, will differ from the old Philippine Constabulary, especially since many of the same people will be involved.

The Right to Monitor

The Philippines continues to boast arguably the most multifaceted — and confusing — set of nongovernmental human rights organizations in the world. The network of human rights monitoring, education and advocacy groups draws its strength from the diverse group of professionals who have devoted their energies to the issue — from clergy monitoring abuses in their rural church parishes to lawyers and academics drafting human rights reforms at top levels of government — and from a strong and relatively uncensored press. Advocates in 1991 achieved some success in attaining new legislation and in building public awareness of rights through the media.

However, monitors continued to experience difficulties, particularly in monitoring abuses in heavily militarized areas and in highly charged political court cases. Monitors reported being harassed and intimidated, particularly in areas of armed conflict. Members of monitoring and relief missions reported in July that they had been held involuntarily in military camps for as long as a day, photographed, and ultimately prohibited from delivering medical supplies to communities forcibly displaced by combat operations in Marag Valley, Kalingo-Apayao province. In August, another relief and monitoring mission was prevented from entering a heavily militarized zone in Catalina, Negros Oriental, where hundreds of families were reportedly displaced and living without food or medical assistance.

Problems for monitors were worst in Bicol province, where five leading human rights figures were arrested and charged with subversion following statements on the radio by the highest ranking police official that the human rights organization they were working with was a "communist front organization." Two of the five, attorney Antonio Ayo and attorney Santiago Ceneta, were officers in the regional office of the Task Force Detainees as well as long-standing members of the Free Legal Assistance Group, an internationally acclaimed human rights lawyers group. Both had served as defense attorneys in the recent past for suspected New Peoples Army members; they were arrested after Ayo sent

the police a strongly worded response to the public red-labeling, explaining the Task Force Detainee's mission as a campaign against militarism. A third person arrested was an elderly Methodist minister, whom the police claimed had officiated at weddings of New Peoples Army members; the leading organization of Protestant churches in the region wrote a letter denouncing the charges as a "witchhunt."

U.S. Policy

During the first nine months of 1991, the Bush Administration was largely silent on human rights in the Philippines as it remained singlemindedly focused on the negotiations over the fate of the U.S. military base at Subic Naval Station. The Philippine Senate voted to reject a new treaty on September 17, marking the beginning of the end of nearly a century of U.S. military presence in the country.

Until then the principal Administration statement on human rights in the Philippines was essentially flattering of the Aquino government while condemnatory of the guerrillas. In testimony before the House Subcommittee on Asian and Pacific Affairs on March 21, Deputy Assistant Secretary of State for East Asian and Pacific Affairs Kenneth Quinn stated:

President Aquino has maintained her unwavering commitment to democratic processes and civil liberties despite threats to her government from the left and right. It is important to note that the statistics from independent human rights groups in the Philippines indicate that human rights abuses again declined in 1990. Human rights abuses, however, still do occur. The majority of human rights abuses are committed in connection with the Communist insurgency and related counterinsurgency efforts. The CPP [Communist Party of the Philippines] and the NPA continue to commit widespread human rights abuses in the course of their avowed destabilization campaign against the government. The principal human rights abuses committed by insurgents include extrajudicial killings, disappearances, torture, and ambushes. Human rights abuses are also committed by members of government forces, although such abuses are not encouraged or condoned by the Philippine Government. The principal human rights abuses committed by members of

government forces include extrajudicial killings, disappearances, and torture. Government efforts to punish those responsible for violations have often been ineffective. We carefully monitor the human rights situation in the Philippines. Our Embassy in Manila and Consulate in Cebu raise U.S. concerns and urge the Philippine Government to take action where evidence exists of human rights abuses.

Following the rejection of the bases treaty, the U.S. ambassador to the Philippines, Frank Wisner, publicly criticized the human rights record of the Aquino government. In a few extemporaneous comments after a speech to Philippine lawyers on October 16, he condemned the slow prosecution of human rights offenders and blamed the security forces for "some of the abuses."

An Embassy official also told Asia Watch that the Embassy had made inquiries into several human rights cases, including killings attributed to the Philippine Armed Forces and vigilante activity in Negros and Surigao del Sur. However, this official could not point to any individual case in which formal protests had been lodged.¹⁰²

The Philippine military continues to rely heavily on U.S. financial and technical support, and was one of the largest recipients of U.S. aid. Of \$556 million requested for the Philippines in fiscal year 1991, \$140 million was slated for military assistance. Over the past five years, the United States, through the Military Bases Agreement, provided twice the amount the Philippine government set aside for its Armed Forces.¹⁰³ In September, Philippine military officials said in a public statement that seventy-three percent of its Air Force budget came from the United States.¹⁰⁴

The Administration's request for \$556 million in aid in fiscal year 1992 matched fiscal year 1991 levels. However, responding to requests by certain Philippine officials that some military aid be diverted to

¹⁰² Letter from James J. Foster, First Secretary, U.S. Embassy, Manila, dated October 2, 1991.

¹⁰³ *Ibid.*

¹⁰⁴ See William Branigin, "Philippine Military Bucking Senators, Urges Retention of U.S. Naval Base," *The Washington Post*, August 19, 1991.

economic assistance, the House Foreign Appropriations Committee voted to transfer \$100 million of the requested \$200 million in military aid to development assistance.

Despite the House vote, military and economic aid was maintained at the previous year's levels because of a Senate Foreign Appropriations Committee vote to delay all debate on foreign assistance until early 1992, well after the new fiscal year began. Meanwhile, State Department officials have hinted that the Administration's aid requests for fiscal year 1993 might be reduced if the Philippine Congress voted for a rapid withdrawal of U.S. forces.

U.S. aid to the Philippines in fiscal year 1991 also included \$2.6 million under the International Military Education and Training program. A State Department official told Asia Watch that the Administration is considering funding a program of a still undetermined amount through the International Narcotics Matters arm of the Drug Enforcement Agency. It is not yet clear whether this will include police aid.

The Work of Asia Watch

Asia Watch in 1991 continued its efforts to document and respond to the ongoing human rights abuses by all parties to the Philippines conflict. Asia Watch sent appeals to the Philippine government and armed forces expressing concern over continuing threats and harassment encountered by human rights lawyers and over the reported mistreatment of Roberto Roldan, a freelance filmmaker held in detention. Asia Watch also called for an investigation into the October killing of the Rev. Nerilito Satur, a priest in Bukidnon, allegedly by military agents.

Human Rights Watch joined the American Civil Liberties Union of Southern California as counsel for the plaintiffs in *Sison v. Marcos*, a federal lawsuit which alleges human rights abuses by Ferdinand Marcos during his years as ruler of the Philippines. The case promises to set a precedent as the first Alien Tort Claims Act human rights case to go to trial on its merits. It is one of several cases — including a class action on behalf of all Philippine victims of torture, disappearance and summary execution during martial law — that, most likely, will be tried together in Hawaii in 1992.

SOUTH KOREA (Republic of Korea)

Human Rights Developments

In his 1991 New Year's Day message to the nation, South Korean President Roh Tae-woo declared, "Before the century is over, we must complete the task of building a fully democratic nation vibrant with freedom and diversity."¹⁰⁵ In March and June, local council elections were held throughout the country for the first time in thirty years. Voter turnout was low, and the majority of the seats were won by candidates belonging to the ruling Democratic Liberal Party (DLP). Aside from those elections, however, gains for freedom and diversity were notably lacking.

On April 26, 1991, Kang Kyung-dae, a student demonstrator, was beaten to death by five riot policemen. Kang's death sparked the most serious political turmoil in South Korea since June 1987, when another student, Park Chong-chol, died in police custody after torture. From late April to June, the country was racked by large-scale protest demonstrations, as well as a series of suicides by students, activists and workers protesting the government's failure to enact democratic reforms.

A coalition of students, workers and political activists, formed in the wake of Kang's death, demanded the resignation of all cabinet members and the repeal of a number of security-related laws. Partly in response to those demands, the home affairs minister, who is in charge of the police, resigned. The members of the riot police who were directly responsible for Kang's death were arrested. The prime minister also resigned from his post some weeks later. In late May, the DLP-controlled National Assembly enacted a liberalizing set of amendments to the National Security Law and amnestied a limited number of prisoners held under the law, most of whom had completed nearly ninety percent of their prison terms.

When these conciliatory gestures failed to stop the demonstrations and suicides, the government reverted to repression. The authorities ordered a nationwide manhunt for organizers of the demonstrations. Reverend Moon Ik-hwan, a Presbyterian minister and prominent

¹⁰⁵ "Roh Calls for Reunification before 2000," *Korea Herald*, January 1, 1991.

dissident leader who previously had been imprisoned for traveling to North Korea without government permission, had his parole revoked in June 1991 and was returned to jail for participating in anti-government rallies.

The government tried to dismiss the protest suicides by alleging that they were orchestrated by dissident organizations. One political activist was even tried for allegedly having ghost-written the suicide note and aided and abetted the suicide of a fellow activist. The hard line seemed to work; in June, the political turmoil began to subside.

Among the DLP-sponsored amendments to the National Security Law is a provision that the law "shall not be loosely interpreted or otherwise misapplied to unreasonably restrict the basic human rights of citizens." The law no longer forbids all contact with communist organizations or governments, but still requires that all contact with North Korea be sanctioned by the authorities. It also narrows the definition of a prohibited "anti-state organization" to one with a command-and-control system.

Despite the amendments, about four hundred persons are still being held under the law. Some were jailed in 1991, both before and after the law was amended, solely for their peaceful political activities and views. These detainees include eleven members of the Seoul branch of the National Minjung (People's) Arts Movement, arrested in March for allegedly carrying out activities that benefit North Korea because of their pro-unification artwork; six members of the Seoul Social Science Institute, arrested in June for allegedly benefiting North Korea through publication and dissemination of articles and books advocating a socialist revolution; and twelve persons arrested in 1990 and 1991 for their alleged membership in the dissident organization Pan-National Alliance for the Reunification of Korea (*Pomminnyon*), including theologian Park Soon-kyung, who was accused of delivering a lecture at a Christian meeting in Japan in which she reportedly said that it is necessary for South Koreans to understand *Juche*, the North Korean ideology of self-reliance.

Also still in custody despite the amendments are more than forty "non-converted" political prisoners — prisoners who refuse to write "conversion" statements recanting alleged communist or leftist views, regardless of whether they held them in the first place — some of whom have been incarcerated for between thirty and forty years for allegedly engaging in espionage or political agitation on behalf of North Korea. In 1991, five non-converted political prisoners were released due to old age and serious health problems.

Prominent dissidents including Kim Keun-tae, recipient of the 1987 Robert F. Kennedy Human Rights Award, and Jang Myung-guk, a well-known labor activist, also remain imprisoned.

Due in part to worker involvement in the tumultuous political events in April and May, there were fewer labor disputes in 1991 than in the previous year. However, labor unions were still limited in their rights to organize and bargain collectively. In February, about seventy members of the newly created Conference of Large Factory Trade Unions (*Yondehwei*) were rounded up as they were leaving an organizational meeting. Most were soon released but seven key members were formally arrested. At management's request, the police also intervened in labor disputes at Daewoo companies in March and arrested key union leaders on grounds ranging from "interference with normal operation of business" — a charge often used illegitimately to break strikes — to the commission of violent acts. The arrests, in turn, sparked further disputes. In April, some four thousand Daewoo workers walked off their jobs to protest the detention of two additional union leaders who were charged with staging work stoppages and sit-ins over the earlier arrests.¹⁰⁶ In September, General Motors announced that it was severing its ties with Daewoo due to dissatisfaction with its management style and constant labor-management disputes.¹⁰⁷

Discord over editorial decisionmaking at the Catholic Church-owned Pyunghwa Broadcasting came to a head in 1991, resulting in the detention by the police of thirty-seven journalists and the dismissal of all but ten of them.

The Korean Teachers and Educational Workers Union (*Chunkyojo*) lost a crucial Constitutional Court decision. In 1990, the Supreme Court had ruled that the ban on organizing by public school teachers was unconstitutional. In 1991, the Constitutional Court ruled that the ban on organizing by private school teachers did not violate the constitutional guarantees for workers' freedom of association.

Nearly five thousand *Chunkyojo* members participated in a signature campaign demanding political reforms by the government. The Ministry

¹⁰⁶ Yonhap, April 29, 1991, as reported in Federal Broadcast Information Service (FBIS), May 2, 1991.

¹⁰⁷ Yonhap, September 7, 1991, as reported in FBIS, September 9, 1991.

of Education threatened them with retaliation.¹⁰⁸ In September, two teachers were fired and a third had her salary cut for three months for having participated in the campaign.¹⁰⁹

With South Korea's pending entry into the International Labor Organization (ILO), the Labor Ministry discussed amending the labor laws to allow unions to engage in political activities. It also established a special committee to revise labor-related laws, and proposed voiding the current upper limit on the amount of union dues that could be assessed. The amendments have not yet been enacted.

The Right to Monitor

On the surface, domestic human rights monitors seemed to operate fairly freely, but the underlying reality was quite different. Human rights monitors say their office and home telephones are tapped and their activities closely watched by government internal security personnel attached to the Agency for National Security Planning. Monitors also risk arrest if they speak publicly on sensitive human rights issues, although the actual charges against them may be unrelated to human rights work, such as participation in an unauthorized anti-government demonstration.

The case of Suh Joon-shik is illustrative. Released in May 1988 after seventeen years' incarceration for alleged "anti-state" activities, he became one of South Korea's most vocal human rights advocates, chairing the Committee on Long-Term Political Prisoners of the group known as Families of Political Prisoners (*Mingahyup*), and founding an association of long-term political prisoners. In March 1991, he became chair of the Human Rights Committee of the National Alliance of Democratic Organizations (*Chonminnyon*). In May, the government announced that Suh was wanted in connection with the suicide of a *Chonminnyon* staff member following the above-described death of the student Kang. Suh surrendered to the police a month later, but charges on the suicide were never pursued. Instead, in July, he was indicted for having taken part in

¹⁰⁸ "Ministry to minimize penalty on protesting teachers," *Korea Herald*, May 18, 1991.

¹⁰⁹ "2 teachers socked for signing statement in May," *Korea Herald*, September 19, 1991.

demonstrations that turned violent; Suh denied having had anything to do with the violence. Later, the violence charges were dropped and Suh was convicted under the Public Surveillance Law and sentenced by the Seoul Criminal District Court to a one-year suspended sentence and two years' probation. Suh was released on December 13.

U.S. Policy

The Bush Administration promoted the cause of human rights in South Korea by taking the important step of suspending insurance coverage for U.S. companies operating in South Korea by the Overseas Private Investment Corporation (OPIC).¹¹⁰ The action was taken pursuant to a labor rights petition filed with OPIC by Asia Watch and the International Labor Rights Education and Research Fund. OPIC's decision reflects particularly well upon OPIC President Fred Zeder and OPIC General Counsel Howard Hills, who implemented the law in the face of stiff opposition from the State Department's Bureau of East Asian and Pacific Affairs. OPIC, with the concurrence of the State Department's official representative to its board, Assistant Secretary of State Eugene McCallister of the Economic and Business Affairs Bureau, determined in May to suspend OPIC benefits on labor rights grounds. A thirteen-page rationale for the suspension was prepared which discussed Korea's failings with respect to labor reforms, but the document was quashed and the action postponed for a full two months when the State Department opposition arose. A battle between OPIC and the State Department ensued, ending on July 19 with a decision in support of OPIC's position and suspension of Korea from the OPIC program. A significantly trimmed one-and-one-half page rationale was released that contained

¹¹⁰ Section 231A(1) of the Foreign Assistance Act states: "The Corporation may insure, reinsure, guarantee, or finance a project only if the country in which the project is to be undertaken is taking steps to adopt and implement laws that extend internationally recognized worker rights...to workers in that country (including any designated zone in that country)." Worker rights are defined as including the right of association, the right to organize and bargain collectively, a prohibition on the use of any form of forced or compulsory labor, a minimum age for the employment of children, and acceptable conditions of work with respect to minimum wages, hours of work, and occupational safety and health.

little of the detail of the original document. Nonetheless, the decision was a welcome one and brings considerable pressure to bear on the Korean authorities to improve workers rights conditions.

In February, the State Department published its annual *Country Reports on Human Rights Practices*, which appropriately noted a series of serious human rights violations in South Korea. These included a "continuing gap between democratic ideals and actual practice in the continued arrests of dissidents, students and workers under the National Security Law and other security and labor-related laws"; continuing "credible allegations of cruel treatment"; and persistent "[s]urveillance of political opponents by security forces."

Assistant Secretary of State for Human Rights and Humanitarian Affairs Richard Schifter took a similar approach in written answers to questions submitted to him on February 26 by the House Subcommittee on Human Rights and International Organizations. While noting that the South Korean government "is committed to democratic reforms and has made much progress toward that goal," Secretary Schifter touched on such existing human rights problems in South Korea as the high number of political prisoners, including 180 long-term prisoners; the continued imprisonment of "non-converted" prisoners; and the legal ban on union organizing among South Korean school teachers.

In a like vein, National Security Advisor Brent Scowcroft wrote on September 9 to Representative Edward Feighan: "Human rights is a cornerstone of American foreign policy throughout the world, and we have made human rights a key element of our bilateral relationship with the Republic of Korea. Through discussions both here [in Washington] and in Seoul, U.S. officials have made clear our support for democratization and respect for human rights in Korea."

The principal sour note in the Administration's promotion of human rights in South Korea came during a visit to the White House in July by President Roh. President Bush gave no public indication that he had heeded appeals by fifty-one members of Congress to raise human rights concerns during the visit. Instead, President Bush stated that Roh was "building a thriving democracy" and gave him "much credit...for the steady leadership that guides your nation."¹¹¹ Secretary of State James Baker echoed the president: "The United States is confident that the

¹¹¹ Remarks by President Bush during a welcoming ceremony at the White House, July 2, 1991, as reported in the State Department's *Dispatch*, July 8, 1991.

people of Korea are overwhelmingly committed to the success of your democracy and that you are prepared to continue in what President Bush calls the hard work of freedom."¹¹²

The Work of Asia Watch

The death of student Kang Kyung-dae prompted Asia Watch to send a letter to President Roh urging that an independent commission be appointed to investigate Kang's death and that relevant details be made public. The letter also urged that a thorough review be undertaken of the training and discipline accorded riot police, and that appropriate steps be taken to ensure that police conduct themselves in accordance with U.N. standards.

Asia Watch also wrote on behalf of Kang Jong-sun, a young woman living in Daegu city who was allegedly raped in December 1988 by two local policemen. Despite considerable media attention to the case and support from women's organizations in South Korea, nearly three years have passed without the prosecutor's office seriously investigating her claim or moving to prosecute the two policemen.

In March, Asia Watch called for the release of members of *Pommninnyon* who had been jailed solely because of their peaceful activities on behalf of Korean reunification. They remain in custody, even after the National Security Law has been amended, because the law still forbids activities that the South Korean government deems beneficial to North Korea.

Retreat from Reform: Labor Rights and Freedom of Expression in South Korea, the Asia Watch report released in November 1990, continued to circulate widely. The report was a key source cited by OPIC in deciding to suspend new insurance and investment guarantees to U.S. companies operating in South Korea. Asia Watch welcomed OPIC's decision and called on the South Korean government to amend its labor laws to bring them in line with international standards, and to release all unionists and labor activists detained solely for peaceful trade-union and other labor-related activities.

¹¹² Remarks by Secretary Baker at a luncheon for President Roh at the State Department, July 2, 1991, as reported in the State Department's *Dispatch*, July 8, 1991.

In March, Asia Watch sent a letter to Labor Minister Choe Byung-yul protesting the arrests of seven leading members of *Yondehuei* on the grounds that their right to freedom of association — specifically, their right to meet with other union representatives — had been violated.

Throughout the year, Asia Watch assisted members of Congress prepare letters of appeal for the release of peaceful political activists in Korea. Asia Watch also worked with the Congressional Human Rights Caucus and several members of Congress in their efforts to encourage President Bush to raise human rights concerns during President Roh's state visit in July.

SRI LANKA

Human Rights Developments

Sri Lankan security personnel, government-linked vigilante groups, and members of the insurgent Liberation Tigers of Tamil Eelam (LTTE) continued in 1991 to engage in a pattern of gross violations of human rights and humanitarian law, including massacres of hundreds of civilians, torture, abductions and arbitrary arrests. The high level of reported abuse has been fairly constant since June 1990, when a cease-fire broke down and fighting resumed between government forces and the LTTE. The Sri Lankan military's indiscriminate bombing and strafing of civilian areas destroyed homes, hospitals and businesses. The northern city of Jaffna and its surrounding area, the base of LTTE operations, remained without electricity as a consequence of the military's targeting of the main power grid in 1990. Storage of medicines and blood for transfusions remained virtually impossible. In the eastern part of the country, at least seven hundred may have disappeared since January 1991. In the same period in the south, local sources have reported some seven to ten disappearances a month of suspected supporters of the Sinhalese nationalist Janatha Vimukti Peramuna (People's Liberation Front, or JVP).

In July, the most intense battle of the civil war took place in the northeast. On July 9, five thousand Tamil militants attacked an army base

at Elephant Pass which guards the railroad and main road between the Jaffna peninsula and the mainland. Armed with new 14.5 mm artillery, the LTTE laid siege to the camp, frustrating the army's aerial attempts to rescue some eight hundred soldiers, many seriously wounded, who were trapped within. There were also reports that the LTTE had pressed hundreds of civilians into service to dig bunkers and otherwise aid its defense, and that LTTE guerrillas kidnapped over one hundred doctors and nurses from northeastern Sri Lanka to treat those wounded in the Elephant Pass battle.

Not only did this battle involve more combatants than any previous encounter, but it also proved that the LTTE was capable of conventional warfare against the Sri Lankan army. As many as two thousand combatants and hundreds of civilians were killed in more than three weeks of combat. Civilians in Jaffna reported serious shortages of food and other necessities as a result of the fighting. The siege was broken on August 3 by a relief column of over ten thousand government soldiers. By late October, the army had begun a second assault surrounding the Jaffna peninsula and attacking LTTE targets in Jaffna from the outlying islands.

A government blockade of the north restricted transport of all essential supplies including food and medicine, which resulted in severe food shortages by late July. The embargo was relaxed on August 8, but at the end of 1991, there was still a lengthy list of prohibited items, including medicine, soya-based foods, surgical equipment, batteries, gasoline and matches. Fighting on the Jaffna peninsula in October led to another food emergency.

The government's response to international criticism of human rights abuses has been largely superficial. Despite its eagerness to improve its human rights image by appointing commissions of inquiry to address certain highly publicized human rights cases and issues, such as the problem of disappearances, the results of these inquiries have been disappointing.

The government's failure adequately to address charges of massive human rights violations became one of the main accusations used by the opposition in its bid to impeach President Ranasinghe Premadasa and return to a British-style parliamentary system. On August 28, over one hundred parliamentarians, including forty from the ruling United National Party (UNP), moved to bring impeachment proceedings against President Premadasa on charges of treason, bribery, misconduct and intentional violation of the Constitution. The motion charged that the

President had

failed to protect and intentionally and knowingly prevented the investigations and conduct of inquiries and/or to punish those responsible for the...murder of the well-known journalist Mr. Richard De Zoysa, the disappearance of Mr. Lakshman Perera, the disappearance of Mr. Krishna Hussain and thousands of others including youth who were arbitrarily abducted, tortured, killed and otherwise disposed of by hired killer groups.

It also accused Premadasa of operating a "police state" to intimidate political opponents and discourage public dissent.

The president responded to the impeachment motion by suspending Parliament until September 24, and ejecting eight leading dissidents from the UNP. The Supreme Court upheld the ejections on December 3.

In several incidents in 1991, parties to the Sri Lankan civil war indiscriminately attacked noncombatants. On May 3, four workers from the human rights organization Doctors Without Borders (MSF) were injured, two seriously, when a military helicopter fired at their clearly marked vehicle. The team was following a route which it said had been provided by Special Operations Command in Colombo. The Sri Lankan government initially claimed that the helicopter pilots were actually targeting another vehicle, which was said to have fired shots and to have been traveling behind the MSF vehicle. The MSF workers denied that there was any other vehicle in the area. In response to international protest, the Sri Lankan government appointed a one-man commission of inquiry to look into the attack. He concluded that the team had been on the wrong road during a curfew, the helicopter was flying too high to see the vehicle's markings, and no government personnel was responsible for "any wrongful act of omission or commission." MSF officials, who called the inquiry a "whitewash," suspended operations in Sri Lanka until the government could guarantee the safety of their personnel. The commission of inquiry suggested steps to prevent such attacks in the future and, in July, MSF and the government signed an agreement to expand the MSF program in Sri Lanka.

A second incident took place on June 11. Minutes after an LTTE land mine blew up an army tractor, killing two soldiers, angry government troops reportedly massacred over one hundred civilians in the village of Kokkaddichcholai, in Batticaloa District. According to local sources, fifty-six bodies were burned and sixty-seven were buried, while

forty people were hospitalized. There are also unconfirmed reports from local sources and international observers that as many as twenty-one women were raped during the attack. Residents of Kokkaddichcholai managed to get news of the massacre to journalists in Colombo, forcing the government to respond with unprecedented speed. It appointed a three-person commission of inquiry to investigate the massacre and began holding hearings at the air-force base in Batticaloa on July 29. Testimony also has been taken in Colombo.

According to a government report of late November, 136 witnesses have testified before the commission regarding deaths and missing persons, and forty-six more must testify before the commission begins to hear the testimony of army personnel and other official witnesses. The remaining civilians witnesses are expected to give evidence regarding damage caused to homes and property during the massacre. As a result of this testimony, the government estimates the death toll to be between fifty-two and sixty-seven. The same report indicates that between June 12 and November 27 nineteen soldiers were arrested in connection with the massacre, eighteen from the 5th Battalion Gemunu Watch and one from the Pioneer Corps. They are being held at the headquarters of the Gemunu Watch in Diyatalawa.

The government's practice of arming and training extramilitary forces and anti-LTTE Tamil militant groups to fight alongside regular army forces led to escalating violence between Muslim, Tamil and Sinhalese civilians.¹¹³ In August 1990, after a series of brutal massacres of hundreds of Muslim civilians by the LTTE, Muslim leaders demanded that the Sri Lankan government arm their communities. The government responded by establishing Muslim "home guards" in eastern Sri Lankan villages who were soon accused of retaliatory killings of Tamils and other civilians in neighboring villages. Similarly, Sinhalese "village defense units" were armed by the government in April 1991 after a massacre in a village south of Moneragala in which some forty Sinhalese civilians were reportedly killed. In July 1991, according to the *Sunday Times of Sri Lanka*, the army announced that it was stepping up recruitment for the National Guards Battalion, a volunteer force which normally receives only five days' training, with a view toward deploying it in eastern Sri Lanka. Defense officials were quoted as saying that they

¹¹³ Most Sri Lankan Muslims speak Tamil but are regarded as a separate ethnic group in Sri Lanka.

planned to continue to deploy civilian home guards and members of "non-LTTE Tamil groups" to protect the districts of Trincomalee, Batticaloa and Ampara. In the last eighteen months, these three districts were the sight of some of the worst massacres of civilians by all parties.

In July, the government reportedly also began negotiations with India for the release of several hundred members of rival Tamil militant groups held in camps in Tamilnadu, with plans to repatriate them to Sri Lanka to fight against the LTTE. Asia Watch is concerned that if poorly trained militias are authorized to use lethal force without adequate supervision, the result will be a sharp increase in human rights abuses.

The Sri Lankan government took a few steps toward establishing human rights safeguards in 1991, but it remains too early to assess their efficacy. Disappearances of people in the custody of government forces have been a hallmark of the Sri Lankan civil war over the past eight years. After much pressure from human rights organizations and the international community, the Sri Lankan government appointed a Presidential Commission of Inquiry into the Involuntary Removal of Persons, which began hearings on August 5. It has a severely limited mandate. According to press reports, the Commission rejected 535 of the 601 complaints received through August 5 because they had occurred prior to January 11, 1991, when the Commission's mandate authorizes it to begin its study. The mandate thus excludes tens of thousands of disappearances that took place between 1987 and early 1991. According to local human rights groups, the Commission has now received about 160 cases that fall within the mandated time frame and have refused over two thousand cases from before 1991. While the great majority of disappearances since January have occurred in eastern Sri Lanka, only about half of the total number of complaints received by the Commission are from that region. Travel to Colombo from the east to submit claims is difficult and dangerous, and according to human rights organizations, the Commission has not been well-publicized there. Of the sixty-six cases accepted by the Commission prior to the beginning of hearings in August, press reports indicate that thirteen were traced and family members have been informed. The details of these cases have not been made public, but Amnesty International reported in September that in eleven cases, the disappeared persons were found to be in custody, on remand or released. Public hearings have been held in only two cases.

On December 12, a government spokesperson announced that Sri Lanka will accept some thirty of Amnesty International's thirty-two recommendations to improve the functioning of its human rights

initiatives. These include the appointment of regional officers to the Presidential Commission investigating "disappearances" and the extension of the Commission's mandate beyond January 1992, when its current term expires. The report also states that the workings of the Commission and the results of its investigations will be made public.

In the face of severe criticism over the treatment of detainees, the number of disappearances of people in custody, and the difficulty experienced by families in tracing detained relatives, the government in August appointed a four-member Human Rights Task Force (HRTF), headed by J.F.A. Soza, a retired Supreme Court justice. According to a government statement, the Task Force will function for three years, and is designed to "monitor the observance of the fundamental rights of persons detained in custody otherwise than by judicial order." The Task Force has begun to collect information necessary to establish and maintain a central registry of detainees and is mandated work to ensure humane treatment and observance of their human rights. It is also charged to make regular inspections of places of detention, investigate complaints and "take immediate remedial action." In its announcement on December 12, the government also agreed to give the Human Rights Task Force unrestricted access to persons in detention camps, to identify all such camps, and to establish a twenty-four hour HRTF public information service.

One of the major criticisms leveled against the Sri Lankan government in recent years has been its failure to prosecute even well-publicized human rights violations by its own forces, such as the murders of lawyer Wijedasa Liyanarachchi and journalist Richard De Zoysa. The inquiry into the September 1988 murder in police custody of Liyanarachchi, a lawyer with ties to the JVP, was perhaps the most publicized in Sri Lanka of all recent government investigations. On March 18, 1991, the Colombo High Court found three police officers guilty of Liyanarachchi's abduction but not of his death, despite detailed testimony by medical examiners and witnesses at the hospital where he was brought by police on September 2, 1988 indicating that he had died of massive injuries caused by beatings with blunt weapons.

All three officers were charged with murder in 1990, but pleaded guilty to amended charges of conspiracy and wrongful confinement. They were sentenced to prison terms, but the sentences were suspended and fines were imposed. The senior officer later committed suicide. A fourth officer is believed still to be under investigation.

The case of the journalist Richard de Zoysa received more attention overseas. To date, all attempts to convince the Sri Lankan government to appoint a commission of inquiry into the abduction and murder of de Zoysa have failed. De Zoysa's death, in February 1990, became the focus of an international campaign demanding accountability for the activities of government-linked death squads thought to be responsible for thousands of deaths and disappearances between 1987 and 1991. On February 7, 1991, a motion in Parliament to appoint such a commission was defeated because of pending defamation suits brought against De Zoysa's mother, Dr. Manorani Saravanamuttu, by the police officers named in connection with his abduction. Those parliamentarians opposed to the commission, according to the Colombo newspaper *The Island*, claimed that an independent inquiry would raise "the very matter which is the subject of pending judicial proceedings," and that since "abduction and murder are offenses under the penal code of Sri Lanka," they should be "determined by the established courts of the country."

De Zoysa was abducted from his home on February 18, 1990, at about 3:30 A.M., by six armed men, two of them wearing police uniforms. His body was found the next day. His mother, who witnessed the abduction, identified one of the abductors as Senior Superintendent of Police Ronnie Gunesinghe. Dr. Saravanamuttu, her attorney, Batty Weerakoon, and two police officers assigned to guard the attorney have all received death threats in connection with the case. The motive for De Zoysa's killing has never been clearly established, but those close to the case believe he was killed for his human rights reporting.

The Right to Monitor

In past years, civilians involved in human rights monitoring, particularly lawyers and journalists, have been subjected to harassment, death threats, torture, abduction and extrajudicial execution, by both government security personnel and members of militant groups. Travel and fact-finding, never easy, have become increasingly dangerous as the war in the northeast drags on. Mail sent abroad is opened and sometimes seized, and fear of wiretapping restricts all phone conversations. Despite these extraordinarily difficult conditions, a few excellent human rights organizations continue to function in Sri Lanka.

Access to northern Sri Lanka is severely restricted, both because many roads are mined and because the government and the LTTE have

set up numerous checkpoints along routes to and from the Jaffna peninsula. Nevertheless, a number of well-documented reports by local human rights groups were published in 1991, most focusing on conditions in the north and east, and individuals still manage to send this information out of the country.

Two human rights monitors who disappeared in 1990 remain missing. Kumaraguru Kugamoorthy, a member of the National Committee of the Movement for Inter-Racial Justice and Equality, who was abducted by a group of unidentified men, one of whom was wearing a khaki uniform, in Colombo on September 6, 1990. On August 15, 1990, Father Eugene Hebert, an American Jesuit missionary who was active on the Batticaloa Peace Committee and regularly acted on behalf of the disappeared in his region, himself disappeared while traveling between Valaichchenai and Batticaloa. He and a young Tamil passenger were last seen early that morning in an area controlled by the Sri Lankan army.

Sri Lankan human rights organizations expressed deep concern over a new threat to their ability to operate in 1991. In December 1990, President Premadasa announced the appointment of a seven-person commission of inquiry into the activities of nongovernmental organizations (NGOs). The commission's mandate was extremely broad, empowering it to:

inquire into and obtain information in respect of —

(a) the activities of the Non Governmental Organizations...which are functioning in Sri Lanka today...;

(b) the provisions of law if any which have been promulgated for monitoring and regulating the activities and the funding of such organizations;

(c) the institutional arrangements if any which are currently in existence for monitoring and regulating the activities and the funding of such organizations;

(d) whether any funds received from foreign sources as well as generated locally have been misappropriated and/or are being used for activities prejudicial to national security, public order and/or economic interests and for activities detrimental to the maintenance of ethnic, religious and cultural harmony among

the people of Sri Lanka; [and]

(e) the adequacy or otherwise of the existing provisions of law and the institutional arrangements for monitoring and regulating the activities and the funding of such organizations....

To carry out its investigation, the commission circulated a preliminary questionnaire to NGOs requesting information on the nature and structure of the organization; names, salaries, addresses and visa status of staff members; past agreements with the Sri Lankan government, including liaison with or membership on government committees; resources and financial information, including accounting procedures; affiliations with other groups, grass roots organizations and citizens' committees; copies of surveys and research papers on social problems, whether published locally or abroad; and suggestions for further links between the government and NGOs. A supplementary questionnaire was sent to certain NGOs requesting detailed information on their financial status, including information on the private bank accounts of staff members as well as the names, addresses and bank balances of their spouses and children.

The initial investigation focused on rural development organizations and, in particular, the activities of Sri Lanka's largest development organization, Sarvodaya. The investigation followed a series of very public and personal attacks in the state-sponsored press on Sarvodaya's charismatic leader, Dr. A.T. Ariyaratne. He and his family also received a number of death threats by unidentified callers.

To date, human rights organizations have not been singled out for investigation by the NGO commission, but the human rights community is worried that it might become a target. Particularly ominous was the request in the preliminary questionnaire for information about the NGO's relationship with citizens committees. Such committees have been instrumental in collecting and disseminating information on human rights conditions in their communities.

U.S. Policy

In February and March, at hearings before the House Subcommittees on Asian and Pacific Affairs and on Human Rights and

International Organizations, State Department officials expressed concern over Sri Lanka's human rights performance. But the Bush Administration missed a key opportunity to back up this spoken concern with concrete action when it vetoed a move to attach minimal human rights conditions to the foreign aid bill for fiscal years 1992 and 1993.

According to State Department sources, the Bush Administration gave Sri Lanka a total of \$51.1 million in aid in fiscal year 1991. In March 7 testimony before the House Subcommittee on Asia and Pacific Affairs, State Department officials announced that the Administration, for fiscal year 1992, had requested \$19.3 million in development assistance, \$21.6 million in food aid, and \$200,000 for military training. At the same hearing, the State Department acknowledged serious human rights abuses "by all parties to the conflict, including government forces," stressed the obligation of the military and police to uphold the law, and urged the Sri Lankan government to "vigorously investigate all extrajudicial killings and disappearances credibly linked to security forces and bring those responsible to justice." It also asserted that "there must be a greater effort to investigate officials linked to serious abuses [, and] [d]iscipline in the security forces must be strengthened." Despite these accurate and appropriate criticisms, the Administration has once again thwarted efforts to condition aid on an end to abuses. Given the seriousness of continuing abuses in Sri Lanka, U.S. law requires an end to such aid unless it directly benefits the needy.¹¹⁴

Between April and June 1991, the United States supported loans to Sri Lanka totaling over \$221 million from the World Bank and the Asian Development Bank, including \$57 million for telecommunications. Section 701 of the International Financial Institutions Act of 1977 mandates U.S. opposition to such bank loans to governments that consistently engage in gross violations of human rights, except when a loan expressly meets basic human needs. The U.S. should oppose all loans to Sri Lanka that do not fall within the statutory exception.

In August, acting on complaints by trade unions and human rights organizations, U.S. Trade Representative Carla Hills announced that she would begin an investigation into abuses of worker rights in Sri Lanka. The investigation could result in the loss of duty-free treatment for some exports. Public hearings began in October and a decision is expected in

¹¹⁴ See Section 116 of the Foreign Assistance Act and Section 112 of the Agricultural Trade Development Assistance Act.

April 1992.

The Work of Asia Watch

In 1991, Asia Watch continued its efforts to document and respond to the ongoing human rights crisis in Sri Lanka, focusing particular attention on the serious violations that have occurred in the war between the LTTE and the government in the northeast.

On March 11, Asia Watch released "Human Rights in Sri Lanka: An Update," a comprehensive newsletter on the human rights situation in Sri Lanka from June 1990 to March 1991.

On April 8, Asia Watch met with Sri Lankan Ambassador Susanta De Alwis and the head of the Embassy's political section, Bernard Goonetilleke, at their request, to discuss human rights initiatives by the Sri Lankan government. We also discussed Asia Watch's human rights concerns in Sri Lanka, particularly the need to discipline government security forces and to conduct inquiries into disappearances, including those that occurred before January 1991.

In April, Asia Watch provided information on human rights in Sri Lanka to congressional staff drafting a foreign aid bill that contained human rights stipulations for continued U.S. aid to Sri Lanka. The bill would have required that the Sri Lankan government establish a public register of detainees and ensure that detainees have access to lawyers and family members; enhance efforts to investigate disappearances and prosecute those responsible; minimize civilian casualties in combat operations; and make serious and substantial efforts to investigate and prosecute those responsible for the murder of Richard De Zoysa.

On April 17, Human Rights Watch testified on human rights and foreign assistance before the House Foreign Operations Subcommittee. We called, on human rights grounds, for a limit on U.S. bilateral aid to Sri Lanka and U.S. opposition to loans, except basic human needs projects, to the country by the World Bank and the Asian Development Bank.

On May 3, Asia Watch staff met with Ambassador De Alwis and a special representative of the Sri Lankan president's office, Moragoda, again at their request, to discuss our continuing concerns in Sri Lanka.

Also in May, Asia Watch sent a letter to Ambassador De Alwis expressing concern over military proposals to extend the Indemnity Act of 1988, which immunizes security forces from prosecution for acts

committed under the Prevention of Terrorism Act between July 24, 1979 and December 31, 1987. The proposed extension, which was not enacted, would have covered actions committed after 1987.

In October, Asia Watch contributed a chapter on Sri Lanka in a Human Rights Watch report on human rights in Commonwealth countries, issued at the time of the Commonwealth Heads of Government Conference in Zimbabwe.

VIETNAM

Human Rights Developments

Vietnam's human rights record in 1991 was marked by opposing trends. The Seventh Party Congress, held June 24-27, while producing few significant changes in policy, provoked unprecedented public debate on the political and economic direction of the country. The backdrop to this debate was communism's continuing collapse in Eastern Europe and the Soviet Union, which served to deepen the party's fears of "peaceful evolution," i.e., subversion from the West. The result was that while the trend toward increased openness in speech, religion and economic pursuits continued, the government reinforced its campaign of sharp repression against perceived critics and enemies. Similarly, while Hanoi released several long-term political detainees, it was preparing to bring other, more recent political prisoners to trial.

As the draft party platforms circulated for comment in late 1990 and 1991, the strong criticism that emerged took the leadership aback. In December 1990, retired Colonel Bui Tin, a former editor of the official daily *Nhan Dan*, castigated the party in a series of British Broadcasting Corporation (BBC) broadcasts from Paris, where he was on official leave. Equally pointed calls for democracy, political pluralism and respect for human rights issued from intellectuals at home, including Nguyen Khac Vien, one of Vietnam's most prominent official historians and editors; the philosopher Hoang Minh Chinh; and Phan Dinh Dieu, a leading mathematician who is vice president of the National Center for Scientific

Research in Hanoi.¹¹⁵ Hardliners responded not only with rebuttal in the state media, but also with arrests and expulsions from the Communist Party.

Colonel Bui Tin, still in Paris, was stripped of party membership. His house in Vietnam came under continual surveillance, his immediate family was forbidden to communicate with him, his wife was interrogated repeatedly, his daughter was demoted from her position as an eye surgeon to that of an eyeglass sales clerk, and his son-in-law was forbidden to take a scholarship offered by Harvard.

Another prominent critic, the novelist Duong Thu Huong, was arrested in April for allegedly attempting to send confidential documents out of the country. In conjunction with her arrest,

Dr. Bui Duy Tam, a Vietnamese with U.S. citizenship, was imprisoned for two months for supposedly transporting documents "detrimental to the national security." These documents included a personal letter that Dr. Bui had received from Bui Tin, a copy of the minutes of several official associations, and some literary and historical works published in Vietnam. Dr. Bui, who suffered a stroke in captivity, was released on May 31 and expelled from the country. Duong Thu Huong was held at a security "guesthouse" until his release in November.

Interior Minister Mai Chi Tho, in a published interview, accused Duong Thu Huong and Bui Tin of aiding an overseas campaign to "destroy" Vietnam. He also described as "spies" two U.S. citizens expelled in 1990 — businessman Michael Morrow and Mennonite teacher Miriam Hirschberger — and defended the detention since 1975 of over one hundred persons associated with the former South Vietnamese government. The accusations against Morrow and Hirschberger are widely regarded as baseless — a product of internal struggles over ideology. In a display of paranoia that embarrassed even some officials, Miriam Hirschberger's photograph was installed for a time in an exhibition on espionage at Hanoi's Museum of the Revolution.

More ominous was the press campaign launched against the Vietnamese citizens arrested for their association with Michael Morrow,

¹¹⁵ See Murray Hiebert, "Higher Criticism," *Far Eastern Economic Review*, May 2, 1991; Nayan Chanda, "Editor's Letter Indicated a Growing Rift at Highest Levels of Vietnamese Party," *Asian Wall Street Journal*, March 11, 1991; Phan Dinh Dieu, "A Plea for Basic Freedoms and a System That Works," *The Asian Wall Street Journal Weekly*, June 24, 1991.

who have been held for over a year. A series of articles in official publications accused Doan Thanh Liem, Do Ngoc Long and others of collaborating with Morrow and other purported American "spies" in collecting information on Vietnam for use abroad. At least one article called for them to be put on trial, but no date has yet been set. Both Do Ngoc Long and Doan Thanh Liem have also had health problems during detention and are feared to have suffered abuse.

A similar press campaign targeted Dr. Nguyen Dan Que, an endocrinologist who was arrested in May 1990 for signing a public appeal calling for political reform and human rights. On November 29, 1991, Dr. Que was given a four-hour trial, denied the opportunity to speak in his own defense, and sentenced to twenty year of hard labor and five additional years of house arrest for actions "subversive" to the state. Another man, Nguyen Van Thuan, received a ten-year prison sentence at the same trial, and two others, Le Duc Vuong and Nguyen Thien Hung, will also be tried for their association with Dr. Que. Dr. Que was an outspoken advocate of human rights and nonviolent political change, and a member of Amnesty International since his release from ten years' imprisonment for "reeducation" in 1988. The charges against him alleged that he had distributed thousands of political leaflets within Vietnam and recruited others to his point of view.

When the date of the Seventh Party Congress finally arrived, Hanoi came under stringent security measures, with access closed to foreigners, including two U.S. representatives who were in the process of opening an office to account for U.S. military personnel missing in action during the Vietnam War. Asia Watch received reports that many Vietnamese were kept under house arrest or in custody during this period.

Unlike past years, which had seen amnesties for thousands of political prisoners, just over a dozen prisoners were rumored to have been released in 1991 on the September 2 National Day. However, several very prominent prisoners of conscience were released in September and October. They included the poet Nguyen Chi Thien, who has spent most of his adult life in custody; the novelist and professor Doan Quoc Sy, held since 1984; and the Catholic priest Le Thanh Que, arrested along with other priests for religious writings in the early 1980s.

Abuse in custody continued to be a serious problem in 1991, with detainees subject in some cases to beatings, nighttime interrogation, and deprivation of food, exercise and medical care. In one case, a person suspected of aiding the escape of a group of "counterrevolutionaries" was beaten to death by jailers. "Reeducation" camps continue to exist

throughout the country, and inmates are subjected to hard labor, inadequate rations and medical care, and coercion to write confessions and reports on each other. Upon release, former detainees report police surveillance and difficulty in having their residency and identification documents restored.

Vietnam agreed in 1991 to give the International Committee of the Red Cross access to political prisoners held in "reeducation" camps since the end of the war. The agreement, announced in December, is a significant step for Vietnam toward allowing outside scrutiny of its compliance with international human rights norms. Party officials have told reporters that those persons still detained since 1975, estimated to be slightly over one hundred in number, would all be released by early 1992.¹¹⁶

Administrative detention remained the norm and judicial process the exception for persons arrested in Vietnam. Although Vietnam has made a concerted effort over the past three years to draft both civil and criminal statutes, the legal infrastructure remains underdeveloped, with fewer than five hundred licensed lawyers in the entire country. The government agency that supervises criminal investigations admits that it is not yet able to adhere to the statutory time limits on pretrial detention in all criminal cases.¹¹⁷ For political detainees, such as those mentioned above, time limits appear to be extended indefinitely. A paucity of lawyers defeats otherwise admirable statutory safeguards on detention, such as the advocate's right to be present during police interrogation. Moreover, the number of criminal cases rose by ten percent in the first half of 1991, as the anti-crime campaign inaugurated by Council of Ministers Directive 135 continued. Though primarily directed at common crime, the campaign also targets those who are seen as threats to "political security" and owners of contraband videos and publications.

¹¹⁶ Kathleen Callo, "Vietnam to Give Red Cross First Access to Re-Education Camps," Reuters (December 3, 1991).

¹¹⁷ Tran Quyet, chief procurator of the Supreme People's Organ of Control, stated that "most" criminal cases are handled within the time limits and that "better progress has been made" in accelerating the processing of criminal cases. Hanoi Voice of Vietnam Network, August 7, 1991, as reported in Federal Broadcast Information Service (FBIS), August 15 1991.

Vietnam embarked on several revisions to its laws in 1991. Draft amendments to the 1980 Constitution were to be publicized by the end of 1991. They include a de-emphasis on socialism in the description of economic relations, and increased separation of party and state functions. Less progressive were amendments to the penal code that extended the death penalty to crimes involving fraud and bribery, both of which have become serious social problems as economic controls relax.

A new law also came into effect on religious associations, codifying government control over religious activities. The law, decreed in March, requires government approval for appointing clergy or elected laypersons; conducting religious activities other than those regularly scheduled; holding retreats, religious conventions or training sessions for clergy; operating monasteries, and establishing or maintaining contacts with foreign religious organizations such as extending invitations to visitors or receiving foreign aid. While guaranteeing the right to "practice, deny or change one's religion" and prohibiting discrimination based on religion and beliefs, the law also contains provisions suited to restricting religious freedom, such as those forbidding "superstition," "propaganda of superstition and activities interfering in work, training, and civil obligations" and activities "under the cloak of religion which undermine the independence of the country and the government...or cause damage to the integrity and unity of the people, or interfere with civil obligations."

Official constraints on ordination of clergy have left many Vietnamese congregations without leaders. Interest in religion among laypeople has soared in recent years, and observance has become markedly more open. In conjunction with official suspicion of foreign influence, Protestants came under particular scrutiny, with a number of pastors arrested in 1991. Among them were Dinh Thien Tu, who had begun a social work program without government approval, and Tran Dinh Ai. Two overseas Vietnamese clerics were arrested on June 28 and held for two months before being expelled. Reverend Nhi Van Ho and Pastor Tuan Phuc Ma, both U.S. citizens, were detained for conducting religious services and distributing religious materials in Vung Tau and Ho Chi Minh City without permits. Vietnam continued to hold other long-term religious prisoners, such as Catholic Father Chan Tin, and Buddhist monks Thich Tue Sy, Thich Tri Sieu and Thich Duc Nhuan.

Despite the restrictive press law adopted in 1990, state media retained some latitude to publish exposes of corruption and fraud. However, clear limits remained on what could be printed. Vu Kim Hanh,

the editor of the youth newspaper *Tuoi Tre*, was fired in late May for publishing an article that suggested Ho Chi Minh may have been married, and two Soviet magazines were banned from distribution. Beginning in August, the Communist Party sought to reach out to intellectuals alienated by the ideological crackdown at the time of the Party Congress. General Secretary Do Muoi met with numerous groups to assure them that the party welcomes divergent ideas, and the ban on writings by Phan Dinh Diem and Nguyen Khac Vien was said to have been lifted.¹¹⁸ However, the government continued to detain numerous writers for "counterrevolutionary propaganda" or attempting to send their writings out of the country.

Freedom of movement within Vietnam continued to improve, and legal emigration swelled through the Orderly Departure Program (ODP). Over eighty thousand persons left in 1991 for Western countries under ODP, and the so-called HO program has settled over twelve thousand former reeducation camp prisoners in the United States in the same period.¹¹⁹ Vietnam continued to criminalize illegal departure, and mete out heavy punishments to "boat organizers," including those who return voluntarily from countries of first asylum in the region.

Despite Vietnam's promise not to persecute or harass any returnees, whether they returned willingly or not, reports by voluntary returnees of harassment and statements by officials raised concern over the forced return of boat people from Hong Kong in November. Some voluntary returnees were subject to intensive interrogation about their associations and activities in Hong Kong, and others were required to report on their activities to their local police stations — treatment typically accorded those on probation. A series of statements by Vietnamese officials characterized as "criminals" worthy of "punishment" those who leave Vietnam a second time after returning once voluntarily. Although these statements were

¹¹⁸ Peter Eng, "Vietnam party wooing intellectuals," *The Standard*, September 28, 1991.

¹¹⁹ Statistics provided by the U.S. State Department. The total departures under ODP for fiscal year 1989 were 65,220, and 39,082 for fiscal year 1988. Applicants for the program are being interviewed at the rate of approximately ten thousand per month. Vietnam still controls the content of the applicant lists given to the United States, and in some cases government authorities have impeded persons from applying.

retracted after publicity, the attitude behind them raise questions about how local officials will treat those returned by force.

Increasing corruption has to some degree mitigated the effects of Vietnam's extensive surveillance apparatus on ordinary citizens, at least for those with the means to bribe susceptible local officials. However, those forced to return will be especially vulnerable, since they are ineligible for any cash allowance and often will have sold all their possessions to finance their trip. The government still gathers extensive information on citizens' political and family backgrounds, and those deemed undesirable still face discrimination in employment and educational opportunities. The recent normalization of relations between Vietnam and China has somewhat improved conditions for ethnic Chinese, and the teaching of Chinese is no longer prohibited, at least in major urban areas; indeed, Vietnam recently published a Sino-Vietnamese dictionary of military terms for use in armed forces academies.¹²⁰ Other minorities, particularly Montagnards and Nung formerly allied with the South Vietnamese government, continued to suffer discrimination and displacement.

The Right to Monitor

Vietnam severely punishes citizens who openly criticize human rights abuses, as demonstrated by the recent case of Dr. Nguyen Dan Que, described above. Any number of provisions of the criminal code are suited to this purpose, among them the prohibitions on "taking actions to overthrow the people's government" (Article 73), "supplying information and documents which are not state secrets so that they can be used by a foreign country against the Socialist Republic of Vietnam" (Article 74c); "anti-socialist propaganda" (Article 81); and "disrupting security" through assemblies (Article 83).

A case in point is Tran Vong Quoc, who was tried and sentence to twelve years' imprisonment on December 31, 1988. The charges against him included collecting information about "reactionary activists" who had been tried and executed for their crimes, intending to pass the information to human rights organizations abroad, corresponding with

¹²⁰ "Sino-Vietnamese Military Dictionary Published," Hanoi Voice of Vietnam, September 28, 1991, as reported in FBIS October 1, 1991.

"anti-government elements" overseas, and inducing others to join in anti-government activities. His brother, Tran Tu Thanh, was sentenced to five years' imprisonment for collaborating with his brother, collecting information on U.S. soldiers missing in action, planning to send this information to U.S. authorities, and writing a report on prison conditions with the intent of sending it to overseas human rights organizations. Tran Tu Thanh has since been released. Both are sons of the well-known human rights lawyer and South Vietnamese legislative opposition leader Tran Van Tuyen, who died from abuse in a labor camp in 1976.

In other cases, the authorities have not bothered with the formalities of a trial. Nguyen Manh Hung, a reeducation camp prisoner from 1973 to 1980, visited the Indonesian Embassy on his second week of freedom to ask its assistance in bringing human rights abuses in prisons to the attention of the United Nations. He was abducted by security officials and sent back to a prison camp as soon as he exited the Embassy door. In 1988, he escaped and fled to Hong Kong.

Harsh treatment has not deterred some Vietnamese from speaking out. According to official accounts, Dr. Nguyen Dan Que, recently sentenced to twenty years' imprisonment, distributed thousands of leaflets calling for political and human rights reforms. Between 1988 and 1990, members of a human rights organization from central Vietnam participated in demonstrations and engaged in leafletting and private advocacy. Following a crackdown on the group in late 1989, members fled to Hong Kong. Given that criticism of government policies can land even a former party loyalist like Duong Thu Huong in jail, human rights advocacy in Vietnam is for the most part surreptitious and unreported.

U.S. Policy

The State Department in April announced a "roadmap" for the normalization of relations with Vietnam and by the end of 1991 had committed the United States to taking the first steps toward diplomatic recognition. At the same time, President Bush renewed the economic embargo against Vietnam in September, and in October the U.S. Administration moved to block a World Bank plan to clear Vietnam's debt and resume lending.

The United States, as a condition of normalized relations, requires Vietnam to cooperate with the Cambodian peace process and account for U.S. soldiers still listed as missing in action. According to the roadmap,

the United States will resume normal relations gradually as the Cambodian peace process moves through various phases, beginning with the signing of the accords, and culminating with U.N.-supervised elections and the seating of a new National Assembly. At the signing of the peace accords in Paris, Secretary of State James Baker announced U.S. readiness to lift the twenty-five-mile travel limit on Vietnamese diplomats at the United Nations, to permit U.S. organized travel to Vietnam, and to begin talks on the modalities of normalization of diplomatic relations.

Human rights for Vietnam's own citizens remained separate from the Administration's public agenda for normalization, and Congress generally followed suit. At hearings on April 25 before the Senate Subcommittee on East Asian and Pacific Affairs, Assistant Secretary of State for East Asian and Pacific Affairs Richard Solomon mentioned release of all "reeducation camp political prisoners" as a consistent U.S. policy goal, but avoided saying that it would influence the normalization process. Similarly, at hearings on June 25 before the House Subcommittees on International Economic Policy and Trade and on Asian and Pacific Affairs, nongovernmental witnesses rather than Administration representatives urged that progress in human rights should be a factor in lifting the trade embargo.

However, both the Administration and members of Congress such as Senators John McCain, Tom Harkin, Bob Kerrey and John Kerry and Representative Stephen Solarz raised human rights issues privately with the Vietnamese government, with some results. Following international pressure and State Department queries, Dr. Bui Duy Tam was released after two months of detention and interrogation. In the weeks between the signing of the Paris accords and Secretary Solomon's first meeting to discuss normalization, the poet Nguyen Chi Thien, the writer Doan Quoc Sy, Father Le Thang Que, and the author Duong Thu Huong were freed.

The Work of Asia Watch

Asia Watch issued three newsletters concerning Vietnam in 1991. The first, "Repression of Dissent," described human rights advocacy within Vietnam and the government's efforts to suppress it. In May, Asia Watch pressed the State Department to exert its influence in securing the release of Dr. Bui Duy Tam, a U.S. citizen arrested in Vietnam for possessing writings critical of the party. Dr. Bui was eventually released, thanks to State Department pressure and humanitarian concern for his

medical condition. In November, Asia Watch coordinated efforts with congressional committees to protest the trial of Nguyen Dan Que, one of Vietnam's best known human rights advocates.

"Citizens Detained for Peaceful Expression" set forth the cases of forty-seven individuals imprisoned for voicing political or religious views. Throughout 1991, Asia Watch lobbied the State Department, members of Congress, and the governments of Vietnam's major Western trade partners to raise cases of political and religious prisoners. In particular, Asia Watch briefed on human rights concerns the numerous members of Congress and congressional staff traveling to Vietnam. As a result, many of the cases discussed in the newsletter were raised through diplomatic channels and by visiting government representatives during the year.

"Indefinite Detention and Mandatory Repatriation" examined Hong Kong's detention policy and the treatment of returnees in Vietnam, arguing that conditions were not appropriate for forced repatriation. Between May and September, an Asia Watch staff member interviewed asylum seekers and refugee workers in Hong Kong and Thailand about human rights conditions in Vietnam. Asia Watch also advocated refugee status on behalf of certain individuals to government and U.N. authorities. In November, Asia Watch made a submission to a hearing on mandatory repatriation before the House Subcommittee on Asian and Pacific Affairs, detailing objections to Hong Kong's screening policy and Vietnam's ability to ensure fair treatment of returnees. The Asia Watch objections to the first forced return of boat people from Hong Kong received international press coverage.

Asia Watch renewed its request to send a mission to Vietnam to examine human rights conditions and the legal system, but no response was forthcoming. On several occasions during the year, Asia Watch reiterated its human rights concerns to members of Vietnam's Mission to the United Nations in New York.

HELSINKI WATCH OVERVIEW

Human Rights Developments

The optimism that attended the East European revolutions of 1989 had already dimmed somewhat by the end of 1990. Now, at the close of 1991, we are forced to conclude that some of our worst forebodings have become reality. If there is any room left for surprise, it is mainly at the speed with which the events we feared have come to pass.

The demise of communism in Europe has brought grave human rights problems in its wake. A fierce and brutal civil war is raging in Yugoslavia. The Soviet empire has come to an end with new and diverse republic governments now responsible for the protection of human rights. In Romania, vigilante miners, who last year supported the government by brutally suppressing demonstrators, this year smashed the Parliament building in violent protest against price increases and forced the government to resign. In Albania, the demise of communism has been a stormy one, resulting in considerable turmoil, an attempted mass exodus, and violence.

Turkey, a strongly anti-communist member of NATO, has long used the fear of a communist takeover to justify repression against its citizens. But the end of a "communist threat" has not eased repression in Turkey, where torture in police detention centers continues unabated. Indeed, violence has escalated in the country; in the past year we have reported on a significant number of deaths in detention and the murder of a human rights activist.

Communism is fast being replaced, both in Eastern Europe and in the former Soviet Union, by the ideology of nationalism. In some cases, communist leaders have merely traded in one mantle for the other. Nationalism, which often leads to ethnic conflicts, border disputes and discrimination against minorities, is potentially dangerous to the cause of human rights, as the violence in Yugoslavia and various republics of the former Soviet Union illustrates.

Czechoslovakia, Poland and Hungary, where new democracies are struggling to take hold, are also facing new problems in the process of de-communization and in addressing abuses of the past. It is ironic that in Czechoslovakia, where an enlightened president came to power in 1989 declaring that all citizens should take responsibility for what happened in

the past, the Parliament has recently passed a law to prevent, among others, former communist officials and all those whose names are listed as collaborators in secret police files from occupying high-level administrative positions in the public sector. The law, which assumes guilt by association and considers people guilty until proven innocent, does not provide for due process and could unleash a witch hunt of considerable proportions. Similar legislation is also being considered in Poland and Hungary. In the three Baltic states that achieved their independence in 1991 — Estonia, Latvia and Lithuania — new kinds of human rights issues have become cause for concern: the rehabilitation of former war criminals, legislation restricting the right to citizenship and property, and discrimination against minorities.

The variety of problems that Helsinki Watch now faces has increased dramatically, as has the number of new independent states and regions that we now monitor. Before 1989, our major focus was on a region completely under Soviet hegemony, with a monolithic structure that made it possible to understand and respond to events in the various Warsaw Pact countries almost as if they were a single entity. Now, the countries in the region have not only taken on new individuality, but many are also fracturing into their constituent parts, and some of these constituent parts, in turn, may soon splinter further.

The Right to Monitor

In such a time of turmoil, it has become increasingly important for Helsinki Watch to have contacts with local human rights monitors who are investigating and recording human rights abuses and issuing information that we know is reliable. But ironically, the sudden opening of many formerly closed societies has led to a diminution of indigenous human rights monitoring. In the formerly Soviet republics and Eastern Europe, where human rights monitoring (as well as the persecution of monitors) was a highly developed art, monitoring by citizens is now, at last, largely free of danger. But many of those previously active in the human rights movement are now involved in politics: they are either running their governments or active in the opposition. For the most part, new people have not emerged to take their place.

At the same time, Helsinki Watch now has unprecedented opportunities to send fact-finding missions to countries that were previously closed to us and where we were unable to travel openly for

human rights purposes. We have seized the opportunity to send missions to far-flung places. We have also stationed our own representatives for long periods of time in Helsinki Watch offices in Bulgaria, Romania, Yugoslavia and, most recently, in Moscow. The ability to work in these countries on an extended basis has not only improved the quality of the information we are able to gather, but it has provided us with a network of contacts in these countries and given us an organizational presence there. Part of the work of Helsinki Watch has been to discover new people interested in doing human rights work in their countries. We are now developing projects for training them, when necessary, in the skills of taking testimony and the methodology of human rights fact-finding.

In Turkey, the human rights monitoring situation remains a mixed one: human rights monitors are now formally allowed to function, but monitoring is not without risks. Monitors are routinely repressed and, during 1991, one human rights activist was killed.

U.S. Policy

The U.S. government has always walked gingerly with regard to human rights criticism of Turkey, a valued NATO ally. Although the State Department in recent years has been forced by public pressure to acknowledge the existence of torture and other human rights abuses in Turkey, its expressions of concern have been, for the most part, in the realm of quiet diplomacy. The same has traditionally been true with regard to Yugoslavia, which successive U.S. administrations considered "our" communist country as distinct from "theirs" (i.e., the Soviet Union's).

With the breakup of the Soviet Union and the collapse of communism, such old distinctions no longer pertain. However, the result has not been beneficial to the cause of human rights. It was hoped that, with the end of the Cold War, the United States would be in a position to criticize human rights abuses wherever they occur. Instead, human rights protests have largely disappeared from the agendas of U.S. governmental bodies when it comes to the countries of the former Warsaw Pact. The State Department, to its credit, has been engaged in constructive human rights activities aimed at the building of democratic institutions in the former Eastern bloc, surely a worthy and necessary task. But the Department has been reluctant to criticize ongoing human rights abuses in the Soviet Union, Yugoslavia or elsewhere in Eastern Europe. Its main concern has been to shore up the faltering central

governments in these countries; in the Soviet Union and Yugoslavia, this policy continued long after its futility became apparent.

As for Turkey, its ties to the U.S. government, if anything, are stronger than ever before, given Turkey's role in supporting U.S. positions during and after the Persian Gulf war. The United State has boosted its aid to Turkey and remains disinclined to raise delicate human rights issues, even in appropriate forums.

In September 1991, for example, the Conference on Security and Cooperation in Europe (CSCE) held a conference on human rights in Moscow. Before and during the conference, Helsinki Watch urged the U.S. delegation to raise human rights issues in countries that heretofore had been spared any human rights criticism in that forum. We argued that the breakdown of the blocs gave the Helsinki process an opportunity to become more than an East-West confrontation. We urged the U.S. delegation to raise publicly for the first time issues affecting Yugoslavia, Turkey and Western democracies. The U.S. ambassador to the Moscow meeting, Max Kampelman, after first expressing a disinclination to initiate such criticisms, later reversed himself, but his criticisms within the CSCE forum were mild. When one recalls Ambassador Kampelman's vociferous defense of imprisoned Helsinki monitors in Soviet bloc countries during the Madrid Review Conference, the contrast is striking.

The Work of Helsinki Watch

The Soviet Union, as the largest and most complex of the countries with which we deal, has always been the main focus of our concerns in the region. In whatever form it ultimately assumes, it will continue to command our attention in the years to come. Well before the rapid move toward independence in the Soviet republics following the aborted August 1991 coup, Helsinki Watch had begun a program of dealing with each republic as a separate entity. This approach did not denote a position on sovereignty, only a recognition that it was the most realistic way to address the human rights issues of concern. Taking advantage of the access we now enjoy to republics that before were off limits to human rights activists, we embarked on a program of missions to and reports on various republics.

We focused on what is known in the region as "hot spots" — regions where there have been violent incidents involving the unwarranted use of armed force against civilians. Many of these regions were later cut off

from the press and from human rights investigators for many months or even years. Unofficial and even official investigative commissions were often unable to publish their findings or found that their reports were ignored. Those responsible for civilians deaths and injuries were never punished.

Since May 1990, Helsinki Watch has sent missions to Armenia (twice), Azerbaidzhan (four times), Belorussia, Estonia, Georgia (twice), Kazakhstan (twice), Latvia, Lithuania, Moldavia, Tadjikistan (three times), Turkmenistan, Uzbekistan and, of course, Russia. Most of these missions have resulted in reports or newsletters on the incidents under investigation. In the course of our work, we discovered that these incidents — even those that occurred some years before we got there — are still uppermost in the thoughts of people living in the republics, and that our interest in investigating such events put us in touch with local activists and served as a good example of how human rights work is conducted to people who are unaccustomed to the process. Our efforts produced considerable internal press coverage and helped establish Helsinki Watch as a respected presence on the Soviet scene.

In investigating Soviet "hot spots," we documented a pattern of violence under Gorbachev. When violence erupted in Lithuania and Latvia in January 1991, we pointed out that these events — which, unlike previous events, were covered by the international press — were part of a pattern of violence that had been established by Soviet and KGB forces as early as December 1986 in Kazakhstan.

Helsinki Watch has also been especially active in Yugoslavia, monitoring human rights abuses in the brutal struggle between Serbs and Croats in which both sides, and the Yugoslav army, are all guilty of egregious behavior. In early 1991, Helsinki Watch reported on the use of excessive force by Serbian police to quell demonstrations in Belgrade and by the Yugoslav army in suppressing demonstrations in Slovenia.

Helsinki Watch is engaged in preparing a series of reports on the problems of Gypsies in various countries that we monitor. In 1991, we published reports on Gypsies in Bulgaria and Romania, describing escalating violence and discrimination against Gypsies and a disinclination on the part of the authorities to protect Gypsies from such attacks. Helsinki Watch has sent missions to Germany and Czechoslovakia to gather information for reports on the situations of Gypsies in those countries.

Helsinki Watch continued to report on violence in Romania, following up on the June 1990 miners' attacks against civilian protestors

in Bucharest and pointing to the failure to prosecute those responsible for abuses; months later, the miners attacked again, this time against the government that had failed to prosecute them.

Helsinki Watch also reported on excessive force used by the police in Turkey to suppress demonstrations and to conduct raids on houses in which terrorists were suspected of hiding. We continued to monitor pervasive human rights violations in Turkey involving torture, including of children, deaths in detention, and the killing of a human right activist.

In 1991, Helsinki Watch sent its first mission to investigate the armed conflict in Northern Ireland, and published a detailed report on human rights abuses committed by both security forces and paramilitary groups in violation of international human rights and humanitarian law and standards.

Helsinki Watch is also closely watching the ways in which countries address abuses of the past. The question is a delicate one: on the one hand, we believe that it is important that there be full disclosure of such abuses and that the perpetrators of crimes be punished; on the other hand, caution must be taken so that whole groups of people are not persecuted for their past associations, including individuals who were not guilty of any crime. We have urged that more attention be paid to prosecuting those guilty of crimes under previous regimes in Romania, Bulgaria, Albania and elsewhere, and that the victims of such abuses be rehabilitated. At the same time, we have taken issue with new laws that were passed in Czechoslovakia and the newly independent Baltic nations that presume guilt by association and discriminate against whole groups of people because of their ethnicity or political beliefs.

In addition to new issues such as internal violence and the ways in which governments address past abuses, we have continued our traditional human rights work of monitoring issues such as freedom of expression and the press. In 1991, we published reports on free expression in the Soviet Union, Yugoslavia, Turkey, the United Kingdom and the United States.

We continued our monitoring of prison conditions. In 1991, we published reports on conditions in U.S., Soviet and Czechoslovak prisons, and sent missions to Romania, Spain and the United Kingdom to investigate prison conditions there.

We also continued our series on the treatment of ethnic minorities. In 1991, we issued reports on the Macedonians in Bulgaria and the Turks in Greece and are now preparing a report on the Greeks in Turkey.

We anticipate a significant increase in our work load in 1992. The

disintegration of the Soviet empire has ramifications for the entire region, many of which are yet to be seen. It is both a fascinating and a worrisome time, one that poses great challenges for the Helsinki Watch board and staff in the years ahead.

ALBANIA

Human Rights Development

In 1991, Albania attempted to accelerate the reform process that has gradually brought an end to over four decades of communist rule and political isolation. But significant human rights problems remain, due in part to the near-collapse of the economy and the desperate attempt of thousands of Albanians to flee the country.

During the previous two years, Albania made slow progress toward respect for human rights and the rule of law. There was a gradual abolition of the most repressive practices of the reign of long-time dictator Enver Hoxha, who died in 1985. In May 1990, under the leadership of President Ramiz Alia, the government rescinded several criminal laws that had been used for political persecution. In November 1990, the government restored the right to practice one's religion, began to release political prisoners, and authorized the provision of legal assistance to criminal defendants, which had been prohibited since 1967.

In December 1990, in response to large-scale protests, the government authorized multiparty elections for the first time under the ruling Albanian Labor Party. The next day, the government formally recognized the opposition Democratic Party, and the registration of other political parties followed. Elections were ultimately set for March 31, 1991.

The election campaign was marred by continuing restrictions on civil society that curtailed the ability of the opposition to transmit its message to Albania's 3.2 million people. The opposition parties faced a monumental task in attempting to overcome forty-six years of Labor Party domination. Although registered political parties were allowed to publish their own newspapers beginning in December 1990, the limited availability of newsprint and transportation made it difficult for the

opposition to reach many Albanians, especially in the countryside, where the majority lives. Although formal campaign air time was allocated on an equal basis, government control of television and radio news programs presented an additional disadvantage for opposition parties.

Election observers from Europe and the United States, as well as a number of foreign journalists, were allowed to monitor and report on the elections. Official observers concluded that the elections fell short of internationally recognized standards because of the parties' unequal access to the media as well as intimidation of opposition candidates and political activists during the campaign. For example, a letter received by an opposition party polling monitor in the town of Burreli threatened her and her family with death and the destruction of their house if she did not publicly renounce the opposition.

The Labor Party won a landslide in the rural areas, while the Democratic Party secured a resounding victory in urban areas. According to the final tally, the Labor Party won 64.5 percent of the electoral districts and the Democratic Party captured 27 percent. The Greek minority won seats in three of the five electoral districts where it fielded candidates.

Less than two months after the March 31 elections, the Labor Party government was forced to resign due to growing labor unrest and political protest. On June 10, the Labor Party held its tenth congress and, in an attempt to distance itself from the past, changed its name to the Socialist Party. Later in June, negotiations between the Socialist Party and the opposition yielded a "stability government" with representation from the five main political parties.¹ The opposition appointed seven of the twenty-four cabinet ministers, including the deputy prime minister. All cabinet members were required to give up their political affiliation.

On December 4, the Democratic Party, Albania's largest opposition party, withdrew from the coalition government to force early elections. Prime Minister Ylli Bufi resigned and was replaced by Vilson Ahmeti. In mid-December, President Alia was struggling to find a compromise between the main political parties so that a "stability government" could govern through the winter.

Periodic, unpunished official violence has scarred Albania's political transition. On February 22, a meeting of conservative officials took place

¹ The five were the Agrarian, Democratic, Republican, Social Democrat and Socialist Parties.

at the Military Academy in Tirana. Responding to rumors of a possible coup attempt, a crowd of pro-democracy demonstrators gathered outside, some throwing rocks. Tensions mounted, and soldiers on the roof began shooting into the crowd below, killing four. One policeman was also killed. There was no known official response to the killings.

Only two days after the March 31 elections, official violence erupted again during a demonstration protesting election fraud in the northern city of Shkoder. Four people were killed and over fifty injured when the police fired into a crowd of peaceful demonstrators. Under growing pressure from the Democratic Party, the government announced a commission to investigate the violence. On July 29, after mounting domestic and international pressure, three police officials were put on trial for the shootings. On the third day of trial, proceedings were suspended to allow further investigation. No new trial date has been set.

Albanian security forces also used excessive force in responding to waves of would-be emigrants. On March 8, troops stormed some one thousand refugees perched on a ship in Durres harbor, and a few soldiers opened fire. According to testimony taken by Helsinki Watch the next day in Durres, at least two died and eight were wounded in the attack. On June 11, an Albanian naval patrol shot and killed two Albanian refugees and injured four others who were attempting to flee by boat. At least one civilian was shot during clashes between police and crowds trying to storm ships in Durres harbor on August 7, and there were unconfirmed reports from Albanian journalists that another civilian was shot by security forces during clashes with crowds in the port of Vlore on October 17.

There is no indication that the officials responsible for these shootings have been prosecuted. To the contrary, the Albanian government placed the port of Durres under army control, and Prime Minister Ylli Bufi announced in June that border guards are authorized to open fire on anyone trying to escape.

In early December, the political crisis in the Albanian government, as well as official statements that food supplies would last only one week, provoked three days of food riots throughout the country. Two people were reportedly killed in the city of Lac on December 8 when shots were fired during one such riot. The police and army took control of food distribution in the country, and on December 7 President Alia reportedly issued an emergency decree authorizing Albanian security forces to shoot if necessary to keep order and protect Albania's food supplies.

For many years, Albania had among the largest number of political prisoners in Europe. In late 1990, the government began to release these prisoners in substantial numbers. According to the government, 191 political prisoners were released in 1990, another 202 in January 1991, and 126 on March 17. On July 2, President Alia signed a decree granting amnesty to all prisoners convicted of espionage, sabotage, diversion and terrorist acts, as well as those convicted of slandering high state organs; approximately ninety prisoners were released following the decree. The Forum for the Defense of Human Rights in Albania, an independent monitoring organization, reported shortly thereafter that, according to its information, no political prisoners remain in Albania.

Though a tremendously important step, the mere release of these prisoners did not bring an end to the injustice they continue to suffer. Many have been freed without jobs, housing or even documents to verify their whereabouts during their years in detention.

During 1991, former political prisoners demanded that the Albanian government take specific steps to rehabilitate them. On September 21, a group of former political prisoners went on a hunger strike in the center of Tirana, demanding that they be declared innocent, that their confiscated property be restored, and that the government assist them in finding homes and jobs. On September 24, government representatives met with the strikers and created a commission to address their demands. The commission is responsible for, among other things, finding employment for former political prisoners on a priority basis, providing economic support and housing assistance for them and their families, and identifying the graves of prisoners who died during detention and returning their bodies to their families. On September 30, the Parliament enacted an Amnesty Law recognizing the innocence of all who had been convicted of crimes of conscience under the previous regime. The Amnesty Law also established a method of compensation for former prisoners and included within its scope all persons deported or sent to internal exile for political reasons.

Even before the Amnesty Law, Albanian courts had begun to reconsider sentences passed under the previous regime. On August 10, the Supreme Court reviewed the cases of twenty-two citizens who had been sentenced to death by firing squad on charges of treason and acts of terrorism in 1951. The court found the verdicts unjust and overturned them.

While many of these prisoners were incarcerated for the peaceful expression of their views, all prisoners convicted before then in Albania,

including those convicted for common crimes, were uniformly denied basic due process under the previous regime. Since criminal defense lawyers were outlawed until November 1990, none of the prisoners convicted before then received the benefit of independent counsel, and very few received any legal assistance at all. Because there was no independent judiciary, none received the benefit of a trial before an impartial tribunal. Many prisoners also told Helsinki Watch that they had been coerced to confess to their alleged crimes.

The Supreme Court is in the process of reviewing the cases of all those who claim that their conviction for a common crime was politically motivated or not supported by the evidence submitted at trial. The Chief Justice of the Supreme Court told Helsinki Watch in November 1991 that he had received requests to review approximately five hundred cases. (There are approximately 950 common prisoners currently in Albanian prisons.) The Amnesty Law discussed above also provides that former convicts, prisoners and people sent into internal exile who are not covered by the law may petition the Council of Ministers for review of their cases.

The Albanian government has not sought to hold accountable those responsible for gross human rights abuses committed during the decades of communist rule. There have been no trials of individuals charged with human rights abuses under the previous regime. Instead, several former high-ranking officials were prosecuted for economic crimes such as misuse of state funds. These included:

- o Manush Myftiu, a top communist official under the Hoxha regime, and Kino Buxheli, a state functionary, were arrested on August 31 and charged with misuse of state funds.
- o Former Interior Minister Hekuran Isai, who was also arrested on October 7 for misusing state funds.
- o Members of twenty-six families against whom legal proceedings have been brought following an investigation into the last three years of communist rule, according to current Finance Minister Genc Ruli.
- o On December 5, Nexhmije Hoxha, widow of the former dictator, was arrested on charges of corruption and misappropriation of \$300,000 of state money.

- o Rita Marko, a Politburo member for thirty-four years, was also arrested on December 5 on corruption charges.

There has been no investigation into the Sigurimi, the former Albanian secret police who terrorized the population for decades. The government has failed to provide any information about the whereabouts of former Sigurimi officers or to respond to calls for a thorough investigation into their past and present activities.

Albanian television and radio continues to be controlled by the government. As noted, during the first months of 1991, this control posed difficulties for opposition political campaigning. In late April, transitional legislation transferred control of the television and radio, as well as other official media, from the Executive to the Parliament. However, in late 1991, many political activists still complained of the continuing pro-government bias of the Albanian television and radio. In early November, employees of the state radio and television went on strike to demand the removal of former communists who still occupy senior posts. They demanded that sensitive media positions be filled by nonparty individuals and that the television and radio be completely restructured.

A wide range of opposition political parties, as well as groups representing the interests of minorities, were able to organize during 1991 without government interference. However, in October, Parliament passed a law prohibiting the formation of political parties along ethnic or religious lines. The law was enacted despite the vehement opposition of the Greek minority representatives in Parliament who viewed the law as an effort to prevent them from participating in the 1992 elections. Because the law violates the fundamental political rights of ethnic minorities, it has no place in a democratic society and should be repealed.

On April 10, the Albanian government published a new draft constitution — essentially a revision of the December 1990 draft — incorporating important safeguards for many basic liberties. However, Parliament was not able to reach agreement on the draft and, on April 30, passed transitional legislation to facilitate other legal reforms. Entitled "The Law on the Main Constitutional Provisions," the transitional legislation is to remain in effect until Parliament can agree on the text of a new constitution, presumably in the first quarter of 1992.

Article 2 of the transitional law states: "The Republic of Albania is a juridical and democratic state....The constitutional order, equality before the law, social justice, and pluralism are the foundations of this state...." The law also provides for the depoliticization of the government,

including the president, who may not have any party affiliation. As noted, the law also places radio, television and other official media under the control of the Parliament.

In the course of 1991, Albania moved toward signing several significant human rights documents and joining related international organizations. On June 19, Albania became a full member of the Conference on Security and Cooperation in Europe (CSCE), pledging to honor political and economic freedoms. On October 4, Albania acceded to the International Covenant on Civil and Political Rights, and the International Covenant on Economic, Social and Cultural Rights. On September 12, Albania signed the Final Act of the Helsinki Accords.

The Right to Monitor

The Forum for the Defense of Human Rights and Fundamental Freedoms, the first independent human rights organization in Albania, was registered by the Albanian Ministry of Justice in January 1991 and has been able to conduct its work without open government interference, although Forum members received repeated anonymous telephone threats in the early months of 1991. In June, the Forum protested to the government that law-enforcement forces had failed to protect a warehouse owned by the Forum and the Albanian Red Cross when it was attacked by a large crowd of peasants who stole the goods inside. The warehouse had contained food and medicine for destitute people, former prisoners and victims of persecution. In August, a second independent human rights group was formed, the Association of Former Political Prisoners and Detainees.

Beginning with a visit in early March by a delegation of the Vienna-based International Helsinki Federation for Human Rights (IHF), in which Helsinki Watch participated, international monitoring organizations have been welcomed in Albania. A range of international monitors observed the March 31 elections.

U.S. Policy

The Bush Administration recognized that human rights problems continue to exist in Albania, and for the most part played a positive role in 1991 by raising human rights concerns with the Albanian government and releasing aid only as reforms proceeded. However, the Administration squandered an opportunity to press for freer elections in

March by renewing diplomatic relations before the elections had been held, at a time when serious deficiencies were apparent in the campaign.

Diplomatic ties were renewed on March 15, after a break of over fifty years. According to U.S. government statements, the Bush Administration took the opportunity during prior negotiations to urge the Albanian government to speed reforms and to hold fair elections. In support of political pluralism in Albania, the Administration also received members of the Albanian opposition during the negotiation period.

State Department spokesman Richard Boucher, announcing the re-establishment of diplomatic ties between Albania and the United States, stated:

We have had a number of meetings with the Albanians....In these meetings we have emphasized the importance of increased respect for human rights. We've also noted the elections coming up on March 31st, and we believe it's important for Western countries to support and encourage the process of reform in Albania.

At the signing ceremony to re-establish diplomatic relations, Raymond Seitz, assistant secretary of state for European and Canadian affairs, remarked:

The United States supports and encourages the process of political and economic reform which has begun in Albania. This process will mark an important step forward when multiparty elections are held at the end of this month. We are pleased that Americans will be among foreign groups who will observe them. It will be important to the CSCE community of nations and to the world that these elections are both free and fair.²

The Bush Administration was critical of the first multiparty elections in Albania, but called on the Albanian people to work with the new government to build a democratic state. On April 3, State Department spokeswoman Margaret Tutwiler assessed the elections as follows:

[T]he March 31st elections were the first step on the long road to democracy in Albania....A partial foundation has been laid for

² As reported in the State Department's *Dispatch*, March 25, 1991.

political pluralism and democracy.

Based on reports from U.S. observers and other international election monitors, it appears that the electoral process fell short in several key areas of CSCE standards for free and fair elections.

There are also credible reports of widespread intimidation against opposition party candidates and activists during the campaign and on election day....We call upon authorities to investigate fully and openly all charges of electoral abuses and to propose appropriate measures to redress legitimate grievances.

She also noted the problem of unequal access to the media.

The State Department had been less critical of the same electoral conditions in advance of the balloting. Secretary Seitz, in the above-noted speech, failed to mention the limitations on opposition campaigning that were already fully apparent, suggesting instead that a technically correct balloting would suffice to guarantee free and fair elections.

However, the State Department was outspoken in urging restraint during the tense emigration crisis in the weeks before the election. As thousands of Albanians waited on ships hoping to go to Italy, the State Department urged the Albanian government to refrain from violence. Spokesman Boucher stated: "Albanian authorities should guarantee respect for basic human rights, they should exercise restraint, and they should refrain from the use of violence in responding to the present situation." Troops stormed ships in Durres harbor on March 8, resulting in at least two deaths. In response, Boucher stated on March 11, "We regret the injury and as before we condemn the use of deadly force."

The Bush Administration publicly criticized the post-election violence in the city of Shkoder. On April 4, the Administration officially protested the use of force against peaceful demonstrators and urged a full investigation. On April 19, spokesman Boucher stated:

The head of the U.S. team in Albania has urged the Albanian government that the investigation [into events in Shkoder] be thorough and that its conclusions be released promptly....We remain strongly opposed to the use of force against peaceful demonstrators who are exercising basic human rights, including the right to peaceful assembly, and we would again call on the

Albanian authorities to investigate these acts of violence thoroughly and promptly.

On June 22, Secretary of State James Baker visited Albania, the first such visit ever by a U.S. secretary of state. During his visit, Secretary Baker called publicly for additional reforms in Albania, including the release of all political prisoners, full respect for religious and minority rights, and the elimination of the repressive secret police, the Sigurimi.

During Secretary Baker's visit, he announced \$6 million in aid for Albania, including two thousand tons of powdered milk and other foods, \$1 million in medicine, and \$250,000 in cash for the Albanian Red Cross. According to news reports, Baker made further aid contingent on continued economic and political reforms, including a government that contains representatives of the opposition.

In late August, William Ryerson, who was appointed U.S. ambassador to Albania in late 1991, reported that military cargo planes from the Persian Gulf had delivered foodstuff to Albania and that additional deliveries were planned. This assistance was in addition to the aid package announced during Secretary Baker's June visit. In October, the United States also pledged \$10.5 million to Albania as part of an aid package drawn up by the Group of 24 Western industrialized countries.

Other positive Administration initiatives included sending technical teams to assist in drafting the new constitution and resolving other legal issues, as well as a series of U.S. Information Agency programs on journalism, market economics and education. Given Albania's long isolation, such programs are especially useful and welcome.

The Work Of Helsinki Watch

With Albania's first contested elections under Communist rule scheduled for March 31, Helsinki Watch took part in an IHF fact-finding mission from March 7 to March 12 as part of the first team of independent human rights investigators known to have officially visited the country. The delegation met with senior government officials, including President Ramiz Alia; toured several prison and labor camps; conducted confidential interviews with current and former prisoners convicted of both political and common crimes; spoke extensively with members of opposition political parties and other newly founded independent organizations; and investigated several recent killings by Albanian security forces.

Helsinki Watch issued a newsletter on March 27 concluding that despite the dramatic opening that had occurred in Albania since the December 1990 decree authorizing multiparty elections, significant human rights concerns remained. Helsinki Watch found that ongoing shortcomings — particularly in the area of press freedom — would affect the fairness of the elections, and recommended that opposition parties be given extensive access, on an equal basis with the Labor Party, to the national television and radio during the final days of the campaign.

Helsinki Watch also urged the Albanian government to release all prisoners held for the peaceful expression of their views — approximately ninety such prisoners were still detained at the time of the newsletter — and, in the case of prisoners convicted of common crimes, to release or retry them in proceedings that meet all international requirements of due process. Helsinki Watch called on the government to reexamine the sentences of all those convicted of politically motivated common crimes and to rehabilitate released political prisoners. Finally, Helsinki Watch expressed concern about the apparent willingness of the Albanian authorities to resort to lethal force in the face of peaceful dissent, and urged that those who have used such force without justification be prosecuted and punished.

Following the elections, Helsinki Watch analyzed their shortcomings in an article published in *The Nation*. On June 17, Helsinki Watch wrote Secretary of State James Baker, urging him to raise ongoing human rights concerns with the Albanian government during his visit to Albania on June 22. Helsinki Watch expressed concern about the continued detention of political prisoners, the failure of the Albanian government to release or retry those charged with common crimes, and the need for vigorous scrutiny, prosecution and punishment of those who have used force without justification. The letter concluded:

Helsinki Watch recognizes the significant progress made by the Albanian government toward respect for human rights over the last six months. However, the issues discussed above pose continuing human rights concerns that must be addressed if this process is to continue. The CSCE conference and your visit to Albania — the first by an American Secretary of State — provide valuable opportunities to raise these issues with the Albanian government.

Helsinki Watch closely monitored human rights developments in

Albania throughout the year and developed contacts with civic and political groups in the country. In November, a Helsinki Watch representative conducted a follow-up mission to Albania to evaluate the human rights situation. Meetings were held with the Forum for the Defense of Human Rights, the chief justice of the Supreme Court, the legal adviser to President Ramiz Alia, staff members of the Prosecutor's Office, and representatives of the Association of Former Political Prisoners and the Greek and Gypsy minorities. Interviews were also conducted with numerous political leaders, journalists and lawyers.

In December, Human Rights Watch honored Arben Puto, head of the Forum for the Defense of Human Rights, at its annual dinner honoring human rights monitors from around the world.

BULGARIA

Human Rights Developments

Despite a consolidation of many human rights achievements, Bulgaria experienced continuing political tensions. As minorities faced important obstacles to the enjoyment of equal rights, legal reforms did not sufficiently address minority concerns, and bills in Parliament to extend human rights to minorities received little support.

The National Assembly approved a new Constitution on July 12, which provides broad protection of fundamental liberties. The Constitution significantly curtails the powers of the executive and establishes a Constitutional Court to interpret the Constitution and rescind laws determined to be unconstitutional. However, many Bulgarians view the Constitution as far from perfect, and the final vote was marked by heated debate and protests, especially regarding its provisions on minorities.

Among the Constitution's deficiencies is its ban on registering political parties organized along ethnic, racial or religious lines. Both as drafted and as applied, this prohibition violates the right of peaceful association. For example, on August 7, the largely ethnic Turkish Movement for Rights and Freedoms (MRF) organized a parallel political party, which was denied registration by the Sofia City Court. The court claimed that the Rights and Freedoms Party was unconstitutional because

it would "pursue a political division of the citizens of this country into communities on an ethnic, religious and language basis." The Supreme Court upheld the City Court's decision on August 28.

The Constitution also bans associations or religious societies that have political aims or engage in political activity. Again, such a narrow view of freedom of association has no place in a democratic society. Although the MRF ran in the June 1990 elections as a "movement," fears were expressed that this constitutional provision could be interpreted to prevent it from running in future elections. Rejecting the complaint filed by fifty-four members of parliament opposing the participation of the MRF in the October 1991 elections, the Supreme Court approved MRF's registration on September 20. However, organizations representing the concerns of Macedonians and Gypsies were not allowed to participate in the elections.

The Macedonian organizations Ilinden and Ilinden Internal Macedonian Revolutionary Organization (IMRO)-Independent, both named after the Ilinden uprising of August 12, 1903, have been denied registration because the Supreme court determined that they are separatist organizations that threaten the security of Bulgaria. The decision restricted their ability to gather petition signatures and precluded them from participating in the October 13 elections. However, these organizations specifically disavow the use of violence and state that they respect the territorial integrity of Bulgaria. Helsinki Watch takes the position that organizations cannot be prohibited from advocating territorial autonomy for ethnic or national minorities, unless these organizations use or incite violence to achieve their purpose.

Although the Bulgarian Constitution guarantees the right of all citizens to study their mother tongue, the Turkish minority's demand that Turkish be taught in public schools was adamantly contested by nationalist groups. Blockades and hunger strikes occurred after the Minister of Education announced that experimental Turkish classes would start in March. The National Assembly backed away from its initial schedule and, on March 8, voted to postpone Turkish language classes until September. On October 1, the National Assembly passed a law prohibiting the teaching of minority languages in Bulgarian schools. Alternative legislation to make Turkish classes optional was rejected.

Shortly after the October 13 elections, Bulgaria's departing coalition government lifted the ban on Turkish language education. This step was taken in an effort to reduce ethnic tensions in areas with a large Turkish minority where many Turkish children had been boycotting classes since

the beginning of the school year on September 15. On November 21, the newly elected government issued a decree that minority students in the third through eighth grades may receive minority language instruction as an optional subject four hours a week.

In 1989, at the height of the campaign in Bulgaria to assimilate ethnic Turks, thousands of ethnic Turks fled to Turkey to escape persecution. Many of these Bulgarian citizens are now returning, but their property has been sold by the government to ethnic Bulgarians, and their jobs are no longer available. In July, the government announced that it will provide financial compensation in the amount of approximately 170-180,000,000 leva (\$9,000 to \$10,000) to ethnic Turks who have returned to Bulgaria and taken up permanent residence.

A "Bill Against Ethnic Discrimination," introduced by the environmental group EcoGlasnost in January 1991, has not been adopted and is unlikely to be passed by the current Parliament. The bill includes provisions which track international human rights law.

Gypsies continue to be the targets of discrimination in contemporary Bulgaria, as they have been throughout the country's history. Most Gypsies attend segregated schools where they are denied an equal opportunity to learn the Bulgarian language and, in turn, to advance through the university system. Gypsies also suffer from discrimination in employment, housing and public services, and from the prohibition on political parties formed along ethnic lines.

By and large, Bulgarians enjoy freedom of the press. A wide range of newspapers and journals flourish without governmental censorship. However, the Bulgarian Socialist Party has been accused repeatedly of using its influence to limit access to newsprint by the opposition press.

A Parliamentary Committee for Radio and Television was organized in early 1991 to draft new legislation for restructuring and regulating the national broadcast media. The committee has been deadlocked over such issues as whether a parliamentary committee or the government itself should have ultimate control over radio and television. In July, the committee announced that it would listen to all radio broadcasts that month to evaluate journalists' competency "to work in the national mass media." Independent journalists viewed this step as an effort to intimidate the press and restrict its freedom.

No member of the former government of Todor Zhivkov was tried during 1991 for serious human rights violations under Zhivkov's rule. Instead, former high-level officials were tried for their abuse of power and accumulation of wealth. In June, for example, Stoyan Ovcharov,

former minister of the economy, was convicted of illegally arranging university study in Switzerland for Zhivkov's grandson, and was sentenced to two years in prison. Meanwhile, those responsible for serious violations of human rights, such as the forced assimilation of ethnic Turks during 1984 and 1985, and the government's violent suppression of peaceful demonstrations by ethnic Turks in 1989, are not being prosecuted.

The trial of Zhivkov, the former communist dictator, began on February 26 and soon revealed that the Bulgarian government was not committed to investigate and prosecute crimes of serious human rights abuse. Rather than being charged, for example, with crimes related to the harsh imprisonment of dissidents in concentration camps in the late 1950s or to the forced assimilation of ethnic Turks, Zhivkov was charged with misappropriating state funds and abusing state power by granting favors to friends and relatives. The testimony of the many witnesses called during the first two months of the trial focused on the standard of living of top officials in the Zhivkov government. The trial was postponed in April due to Zhivkov's poor health, and was resumed only on October 23.

In May, the Bulgarian Socialist Party refused to hand over documents from its archives relating to the period between 1944 and 1948, when thousands of Bulgarians were killed for their opposition to the Communist Party. The files would also be likely to shed light on the identity of bodies found in mass graves in the country and the circumstances surrounding their death. There is no public indication that the prosecutor's office has sought a subpoena or other judicial means to obtain these documents for an investigation into these mass murders.

Some Bulgarians were troubled by a section of the new Constitution which provides that the only crimes for which there is no statute of limitations are crimes against "peace and humanity." This provision was interpreted as making the prosecution of lesser abuses more difficult.

On October 13, the Union of Democratic Forces (UDF), which had been the strongest opposition party in Parliament after the June 1990 elections, won 34.8 percent of the vote. The Socialists won 32.9 percent and the Turkish minority Movement for Rights and Freedoms won 6.9 percent. The UDF selected as premier Filip Dimitrov, a thirty-six-year-old lawyer who favors radical economic reform and is a champion of strengthening democratic institutions. He formed the first Bulgarian government since World War II that is free of Communists.

The elections were monitored by many foreign and Bulgarian monitors who reported that they were fair and free, and that minor

irregularities provided no basis for questioning their validity. However, two U.S.-based monitoring organizations, the National Democratic and Republican Institutes, reported from Bulgaria that some attempts had been made to prevent Bulgarian Turks from voting.

The Right to Monitor

Human rights organizations that were not ethnically based were able to operate freely in Bulgaria in 1991. Bulgarian and international monitoring organizations were able to conduct fact-finding investigations without government interference. Helsinki Watch is unaware of any human rights monitor who was threatened or prevented from carrying out his or her activities. However, as noted above, organizations such as Ilinden, which are organized to promote the rights of specific ethnic minorities, continue to face considerable obstacles.

U.S. Policy

Relations between Bulgaria and the United States grew warmer during 1991. There were numerous high-level contacts as the two countries established closer trade relations, and Bulgaria was granted Most Favored Nation (MFN) trading status on June 25. Still, the Bush Administration continued to pay close attention to human rights, noting improvements and demonstrating occasional concern.

Vice President Dan Quayle visited Bulgaria in June to assess the democratic reforms in the country and to discuss closer economic relations. On July 22, the vice president received the Bulgarian deputy prime minister in Washington for further discussions of economic ties. The next day, State Department spokesman Richard Boucher described U.S. policy toward Bulgaria:

The United States welcomes the progress that the Republic of Bulgaria has made in establishing a democratic system of government and a free market-oriented economy. Bulgaria has left behind its totalitarian past; it has shown that it is committed to genuine reform, including respect for pluralism, the rule of law, human rights, and fundamental freedoms....The United States encourages Bulgaria to continue working to build strong,

democratic institutions in order to safeguard the progress it has made and will strongly support those efforts.

The United States announced the establishment of the Bulgarian-American Agriculture/Agribusiness Enterprise Fund, with an initial allocation of \$5 million, to promote development of Bulgaria's private sector. In September, during a visit to Washington by Bulgarian President Zhelyu Zhelev, Vice President Quayle also announced additional assistance for Bulgaria in the areas of health care and training of government officials.

Despite these warming relations, the Bush Administration publicly indicated its disapproval of the law prohibiting political parties organized along ethnic lines. Ambassador Max M. Kampelman, head of the U.S. delegation to the Moscow meeting of the Conference on Security and Cooperation in Europe, stated on September 16:

There is strong evidence that the Bulgarian Government is determined to complete the difficult journey toward a firmly anchored democracy. At the same time, we join those who have noted with concern Bulgaria's new constitutional provision prohibiting ethnic or religiously based political movements.

Bush Administration officials also expressed interest and concern that the October 13 elections be conducted in a free and open atmosphere. The United States sent a delegation of election monitors, which concluded that the elections had been a success with only a few irregularities, and emphasized the dramatic positive changes that have occurred in Bulgaria since the earlier elections of June 1990.

The Work of Helsinki Watch

Helsinki Watch continued to focus its efforts on protecting minority rights. In January, Helsinki Watch investigated the treatment of Macedonians in Bulgaria and issued a newsletter entitled *Destroying Ethnic Identity: Selective Persecution of Macedonians in Bulgaria*. The newsletter concluded that the changes wrought by the revolution of 1989 have been largely illusory for Macedonians, whose rights — particularly their freedom of association — continue to be repressed by the Bulgarian government. Helsinki Watch urged the adoption of a law that explicitly

allows groups to engage in activities without registering if they so choose; the purpose of registration should be limited to such matters as according special legal status to a group for the purpose of opening a bank account.

Helsinki Watch conducted fact-finding missions to Bulgaria in October 1990-January 1991 and March-April 1991 to examine the treatment of Gypsies. Helsinki Watch representatives conducted several hundred interviews with Bulgarian Gypsies, and met with a wide range of governmental leaders, Gypsy representatives, mayors and local councils, teachers and police officers. The investigations culminated in a report, published in June, entitled *Destroying Ethnic Identity: The Gypsies of Bulgaria*, which concluded that Gypsies continue to be the targets of disparate treatment in housing, education and employment. Most Gypsies attend segregated schools where they receive an inferior education and are typically channeled into technical training with little opportunity to advance to university studies.

Helsinki Watch also sent a mission to Bulgaria in February to observe the first week of the Zhivkov trial. The observer concluded that there was little commitment to a thorough investigation and prosecution of serious human rights under the previous regime. Instead, Zhivkov and a few close colleagues were being charged with minor financial crimes.

A Helsinki Watch staff person maintained an office in Sofia during the first half of 1991, enabling Helsinki Watch to monitor human rights developments closely. Helsinki Watch representatives maintained contact with Bulgarian human rights groups, minority rights groups, and organizations and individuals involved in legal reform and constitutional drafting. Helsinki Watch reports on Bulgaria were translated and published in the Bulgarian press, and interviews with Helsinki Watch staff appeared in Bulgarian publications.

ESTONIA, LATVIA AND LITHUANIA³

Human Rights Developments

After more than fifty years of rule by the Soviet government, Estonia, Latvia and Lithuania gained international recognition as independent, sovereign states in late August 1991.⁴ The Kremlin followed suit on September 6. All three new nations were admitted to the Conference on Security and Cooperation in Europe (CSCE) and participated in the Moscow CSCE conference in September. In October, they were admitted to the United Nations, and later that month they became associate members of NATO.

The Baltic states quickly made their presence felt on the international human rights scene. For example, Lithuania expressed its interest in ratifying the U.N. Covenant on Civil and Political Rights. Estonia acceded in December to the optional protocol of that covenant, thereby allowing reporting of individual violations to the U.N. Human Rights Committee. In May 1990, before international recognition of its independent status, the Latvian government acceded to some 50 international treaties, including those on human rights.

An important human rights issue in all three Baltic states is the status of national minorities who were Soviet citizens when the Soviet Union was a single political entity. Many of these minorities may have to fulfill new naturalization requirements to become citizens of the states in which they reside. Proposed new citizenship laws became the focus of intense debate. These questions reached a head in fall of 1991 when all three Baltic states issued new laws or official guidelines on citizenship.

³ This chapter addresses human rights developments in the Baltic states following international and Soviet acceptance of their independence in late August and early September 1991. Events in these states earlier in the year are treated as part of the separate chapter on the Soviet Union.

⁴ On August 22, Iceland became the first country to recognize the independence of the Baltic states. Denmark followed on August 24; Argentina and Norway on August 25; Canada, Malta and Czechoslovakia on August 26; and the European Community, on August 27. The United States granted recognition on September 2, the thirty-second country to do so.

The laws and principles on citizenship in the three Baltic states share certain features. They grant citizenship automatically to those who were citizens or residents of their respective states at the time of Soviet occupation — 1940 — and to their direct descendants. These laws and principles also establish certain residency and language requirements for naturalization, define criteria for ineligibility, and — with the exception of Latvia which changed its law on November 27 — forbid dual citizenship. The ban on dual citizenship has met a hostile reception from emigres who would like to return or take up citizenship in one of the Baltic states but do not want to give up their adopted citizenship in other countries.

Lithuania was the first to produce a law on citizenship, promulgating it in November 1989. (Subsequently, Lithuania issued a new citizenship law on December 10, 1991; at this writing Helsinki Watch has only obtained oral translations of some portions of its text by the Lithuanian Embassy.) The 1989 law automatically extends citizenship to those who can prove they were permanent residents, and were legally employed, in Lithuania for at least ten years before the law entered into force. Those who could meet this requirement, were given two years — until November 1991 — to opt for Lithuanian citizenship. The new law ends this "grace period" for selecting citizenship for those who do not meet the ten-year residency/employment requirement.

Other naturalization conditions state that individuals may be naturalized in the future if they have been permanent residents in Lithuania for ten years with legal employment or a source of legal support, know the Lithuanian language, and know the basic provisions of the Lithuanian Constitution. (The law thus distinguishes between two groups of people: those who had settled in Lithuania ten years before it became a sovereign state, and those who migrated to Lithuania more recently or after the law's adoption. (The preliminary information that Helsinki Watch has obtained on the 1991 Lithuanian citizenship law did not shed light on the key issue of the rights of permanent resident aliens.)

Two provisions in the Lithuanian law violate international human rights standards. Under its provisions on naturalization, citizenship would be denied to recent migrants who, among other things, have been sentenced to imprisonment for "a serious, deliberate crime" or who are alcoholics and drug addicts. Denying citizenship to persons whose criminal conviction took place before the law's adoption adds an additional, *ex post facto* penalty to their punishment, a condition forbidden by international standards set forth in Article 15 of the International

Covenant on Civil and Political Rights. Excluding from naturalization permanent residents who are alcoholics and drug addicts is particularly pernicious because it would likely discourage them from seeking needed treatment. (These conditions still seem to stand in the 1991 Lithuanian citizenship law.)

On October 15, the Latvian Supreme Council (parliament) issued a conceptual framework to guide future legislation on citizenship in Latvia. This legal framework has been attacked by Latvian emigres, who eventually managed to reverse its initial ban on dual citizenship; by the Latvian radical right, who claim that the present Supreme Council lacks the needed legal authority to issue it; and by groups representing various segments of the non-Latvian half of the population. It is likely that these questions will be the subject of many more debates before the new Latvian citizenship law achieves its final shape.

The framework first affirms the validity of the 1919 Latvian citizenship law, in effect in pre-Soviet Latvia. The framework also states that many Soviet citizens settled in Latvia as a result of the long and illegal Soviet annexation of the republic. It points out that one purpose of this law is to "liquidate the consequences of the Soviet Union's occupation and annexation of Latvia" and renew the legal rights of citizens of the Republic of Latvia. Therefore, it revokes the 1940 Soviet law on citizenship for Latvia.

The Latvian government's desire to try to put right the wrongs of Soviet rule are understandable. Even so, some of the categories of those ruled ineligible for Latvian citizenship are overly broad: those convicted for attempting to undermine or overthrow by unconstitutional methods the independent and democratic Latvian republic, its parliamentary system or its government; those serving in the ranks of the Soviet military, MVD or KGB forces and those who settled in Latvia after 1940 upon retirement from these forces; common criminals and those convicted of crimes against humanity; those convicted of disseminating chauvinist, fascist, communist or totalitarian ideologies; those sent to Latvia after June 17, 1940, as Communist Party and Komsomol officials; and registered alcoholics, addicts and those without a legal source of income.

The legal framework states that those who were citizens or legal residents of Latvia before 1940 and their descendants must register for a Latvian passport by July 1, 1992. In general, anyone living in Latvia and wanting to become a citizen can expect to be naturalized if he or she submits an application by July 1, 1992. Such applicants must show:

knowledge of spoken Latvian; proof that he or she is no longer a citizen of another country; proof of a minimum of sixteen years' residency in Latvia; acquaintance with the Latvian Constitution; and willingness to swear allegiance to the republic of Latvia.

While most non-Latvian residents of the republic can meet the sixteen-year residency requirement, some fear discriminatory application of the Latvian language competency exam. According to the 1989 census, only one-fourth of the non-Latvian population speaks Latvian. Protests from various segments of the non-Latvian community were loud.

The Estonian Supreme Council discussed a draft citizenship law on October 15 which would grant citizenship to those who had it before 1940 and to their descendants. It also offers Estonian citizenship to those who later moved to Estonia, can show knowledge of the Estonian language, and have lived in Estonia for at least three years. Language instruction free of charge would be offered to those who have applied for citizenship. The draft law also bars dual citizenship and sets a one-year deadline for Estonians living abroad to choose between renewing Estonian citizenship or retaining foreign citizenship.

The Estonian government issued a call to the republic's political parties to offer suggestions on the draft citizenship law. Conflicting views were expressed on such key points as whether permanent residents should be granted citizenship, the length of the minimum residence requirement, application of the language competence requirement, and whether to allow dual citizenship. Given the wide range of opinion, it seems likely that the debate in Estonia over the citizenship issue will be lengthy and heated.

On September 10, Lithuanian officials disbanded popularly elected local councils in the Salcininkai region and the town of Snieckus, both of which have large ethnic Polish populations, and in Polish-dominated parts of Vilnius. The Lithuanian government tried to justify the action by claiming that these councils had supported the August coup in Moscow. That other motives may have been at play is suggested by the government's replacement of the heads of the councils with Lithuanians.

The action raised renewed concern about the rights of Lithuania's Polish minority, which accounts for seven percent of Lithuania's population. The government responded to criticism by announcing its willingness to receive international experts to investigate the situation of its ethnic minorities. It claims that Poles enjoy the same rights and freedoms as Lithuanians, including the right to study in their native language.

In late August, the Estonian government stopped the activities of the city councils and city administrative units of Kohtla-Järve, Sallamae and Narva in northeastern Estonia — all towns with large ethnic Russian populations. The councils were alleged to have expressed support for the coup in Moscow and a criminal investigation was begun against the council heads. The Estonian government set a date in October for new elections to the town councils. A Helsinki Watch inquiry of Estonian diplomats in the United States produced no further information on the subject.

After the adoption of the Lithuanian rehabilitation law in 1990, the Lithuanian Supreme Court issued more than 22,000 certificates rehabilitating people who had been convicted and deported by Soviet courts for a variety of political crimes. The purpose of the law was to exonerate those who had been arrested on false charges, denied due process or forced to confess. Although the law on rehabilitation prohibits exonerating war criminals, among those who were rehabilitated were people convicted by Soviet courts of crimes against humanity for, among other things, participating in Nazi crimes against Jews during World War II. The government denied rehabilitations to 450 applicants who "[had] blood on their hands."

Under intense pressure from the international community, the Lithuanian government in September admitted that it had not gathered adequate information on those who had been exonerated, but said that guilt would have to be proven on a case-by case basis before rehabilitation would be revoked. The Lithuanian government maintains that the mistaken rehabilitation of war criminals was inadvertent. Five such cases are currently being investigated. To facilitate the process of gathering information on possible war criminals, the Lithuanian government offered to collaborate with the Israeli Parliament and the U.S. Justice Department. In addition, on October 25, the Presidium of the Lithuanian Supreme Council adopted a resolution to create an Office of Special Investigations to collaborate with counterpart agencies around the world in the investigation of crimes against humanity. The Latvian government has also recently indicated its willingness to cooperate with the Office of Special Investigations on war crimes cases.

The Right to Monitor

Helsinki Watch is not aware of any instance in which human rights or other independent monitors have been hindered in their work by any of the new governments of the Baltic states. Political pluralism, certainly in public expression of various viewpoints, has, for the most part, prevailed in Latvia, Lithuania and Estonia in 1991.

U.S. Policy⁵

The United States formally recognized the Baltic republics on September 2, the thirty-second country to do so, and strongly endorsed membership of all three Baltic states in the CSCE process. President Bush supports extending Most Favored Nation trading status to the Baltic republics and exempting them from the Jackson-Vanik Amendment, which limits access to that status.

The Bush Administration reacted strongly to the rehabilitation of possible war criminals in Lithuania. At a September 5 press briefing, State Department spokesman Richard Boucher expressed strong concern, and promised that the State Department would gather more information to follow up on the Lithuanian actions. Both President Bush and Secretary of State James Baker raised the issue of rehabilitation in their separate mid-September meetings with Lithuanian President Vytautas Landsbergis. The U.S. Justice Department's Office of Special Investigation is providing access to its archives to help ensure that questionable rehabilitations are handled correctly.

⁵ See the section on the Soviet Union for pre-August treatment of U.S. policy issues in the Baltic states.

The Work of Helsinki Watch⁶

After the Baltic states gained wide international recognition of their independent status in the fall of 1991, Helsinki Watch continued its work on certain human rights issues. Helsinki Watch arranged a discussion at the Moscow CSCE conference in September of the January incidents of lethal force. Discussion participants included witnesses to the events and officials from the Baltic republics.

The new citizenship law of Latvia has been of particular concern to Helsinki Watch. The organization sent a detailed letter to Latvian officials with copies to Estonian and Lithuanian leaders setting forth its criticisms of the new law.

The rehabilitation by the Lithuanian government of Nazi war criminals was another focus of Helsinki Watch concern. The organization expressed its concerns about this issue to Lithuanian officials in writing and also discussed the problem with the Lithuanian procurator general who participated in the September Helsinki Watch conference in Moscow on lethal force.

As part of an annual Human Rights Watch series of events honoring human rights monitors from various countries, Helsinki Watch brought Latvian parliamentarian and veteran human rights activist Ints Calitis to the United States.

ROMANIA

Human Rights Developments

In 1991, Romania continued to struggle with the legacy of its totalitarian past. Violent incidents persisted, especially against Romania's large ethnic minorities, although the violence received less attention in the Western press than in 1990, creating the misleading impression that the human rights situation was improving. In fact, significant ongoing

⁶ See the section on the Soviet Union for description of Helsinki Watch activities in and on the Baltic states before August 1991.

human rights violations have been compounded by continuing political and economic instability, which has put in jeopardy the human rights gains made since the revolution.

The Romanian police in 1991 responded with excessive force and violence to demonstrators and appeared to target journalists in particular. On January 11, during a large demonstration in the center of Bucharest, ten journalists covering the demonstration were beaten by the police. The next day, nine journalists standing in front of the National Theater and apparently separate from the demonstrators were seriously beaten by the police after they showed their press identification cards. Andre Iliescu, a journalist for Agence France-Presse, was hospitalized for injuries he sustained at the hands of the police. Four journalists were beaten by the police on January 13 under similar circumstances. On February 4, Minister of Interior Doru Viorel Ursu acknowledged that excessive force had been used by the police during the demonstrations. Five individuals responsible for the violence were removed from the police force. However, no officer was prosecuted for this excessive use of force.

In general, members of groups critical of the Romanian government continue to be the targets of threats and intimidation. During 1991, Helsinki Watch obtained numerous reports from journalists and opposition activists who had received threatening telephone calls and letters. Individuals working directly with Helsinki Watch received threatening calls referring to specific Helsinki Watch projects in Romania. Helsinki Watch's correspondence to Romania was tampered with on several occasions during the year. Many other Romanians reported that their mail was opened regularly. Some believe, but cannot prove, that their telephones are tapped. Virgil Magureanu, director of the Romanian Information Service (RIS), acknowledged to Parliament in late 1990 that unidentified parties were continuing to wiretap telephones and open correspondence. Helsinki Watch has received no information that any individual has been investigated and prosecuted for illegal surveillance.

Intimidation occasionally became violent, as several well-known members of the opposition discovered. For example, on January 3, Banu Radulescu, editor-in-chief of the independent journal *Memoria*, was attacked by two men who hit him in the mouth and kicked him after he fell to the ground. Although he dropped his bag, neither assailant tried to steal it. Ten days before the attack, Radulescu had received two threatening telephone calls following a newspaper announcement that the first issue of *Memoria* would appear shortly. The attack occurred after that

issue was released.

Similarly, Petru Cretia, a professor and a member of the Group for Social Dialogue, was attacked on the street on February 12 by unidentified men after receiving several threatening telephone calls to his house. The circumstances of the attack were similar to the Radulescu case. There was no attempt to steal Cretia's belongings.

It is difficult to determine which groups or individuals are behind efforts to intimidate the Romanian opposition. Such attacks and threats are by their nature difficult to document and prove. However, most opposition leaders believe the intimidation is the work of former Securitate members who may have ties to individuals within the reorganized security police, the Romanian Information Service.

Substantial evidence has emerged that former Securitate agents participated in violent events during 1990 and 1991. For example, some Romanians reported that they were able to identify former Securitate officers among the miners rampaging through Bucharest in June 1990, an incident which is described below. However, the Romanian government continues to ignore calls for a public investigation into the role played by the Securitate in Romanian society.

In May 1991, journalists discovered several thousand partially shredded Securitate documents that had been buried near the town of Berevoiesti in mid-1990. The Romanian Information Service admitted that its officers had buried the files but claimed that this was done without the knowledge of RIS head Magureanu. Western and Romanian journalists reported that the files contain information on the Securitate's surveillance of the opposition after the 1989 revolution. State prosecutors announced in late May that they had begun an investigation into the burial, but no indictment has resulted.

The violent events in Bucharest of June 1990 continued to reverberate in 1991. President Ion Iliescu responded to violent anti-government demonstrations on June 13, 1990, by appealing for assistance, which led to a violent rampage by miners on June 14 and 15. Thousands of miners terrorized opposition groups and newspapers, attacked opposition party headquarters and members, assaulted Gypsies, and committed random acts of violence against other innocent citizens.

The trials of those arrested for the June 1990 anti-government violence continued into the spring of 1991. From the outset, there were irregularities in the handling of these cases. In many circumstances, arrest warrants were not issued until a week after individuals were detained, and detainees were denied their right to immediate access to counsel.

What is more, many of those arrested were seized by miners, rather than legitimate police forces. The evidence of criminal conduct was often weak.

By contrast, no miner was tried for the violent rampage through Bucharest. Nor was any soldier or police officer prosecuted for joining in the violence. No investigation was conducted into the role of former and current security police in the June events.

The majority of defendants charged in connection with the anti-government riots were either acquitted or given suspended sentences.⁷ Nevertheless, the trials have had a chilling effect on opposition activity, especially for those who lack international stature. Although no formal restrictions were placed on the former detainees' activities, the authorities advised all of them on their release not to attend opposition demonstrations or political meetings. Several have complained that uniformed police continue to visit their families and their neighbors. Many lost their employment and are having difficulty finding new jobs, possibly because of discrimination by pro-government factory directors against those involved in the anti-government demonstrations.

In mid-January 1991, the parliamentary commission established to investigate the June 1990 violence issued majority and minority findings. Although the commission left many important questions unanswered, one conclusion is inescapable: the Romanian government, including President Iliescu, must accept responsibility for the violence by the miners. The majority report presents unrefuted evidence that prior to the events the government considered the use of extralegal force, and neither President Iliescu nor former Prime Minister Roman registered opposition. The report also presents evidence that high-level members of the government, including Secretary of State Adrian Sirbu, who is an assistant to the prime minister, and the minister of transportation were involved in organizing trains for the miners to travel to Bucharest.

The government's failure to prosecute those responsible for the June 1990 miners' rampage had an ironic effect in September 1991, when miners went to Bucharest to protest the government's policies. The miners fire-bombed government buildings, rioted through the streets, and

⁷ On January 28, 1991, six defendants were acquitted and five given suspended sentences in the "File 2" trial. On April 15, thirteen defendants were acquitted, eleven were given suspended sentences, three were sentenced to "mandatory work" for periods ranging from two years to two years and eight months, and one who had a previous record was given a prison sentence.

forced the government of Petre Roman to resign. A new prime minister, Teodor Stolojan, was appointed on October 1 and, on October 16, the Romanian Parliament approved a new cabinet, including representatives of the National Liberal Party, a traditional democracy party. Helsinki Watch received information that the Prosecutor General's Office was investigating approximately eighty people for their role in the September violence. However, by year's end no one had been arrested for taking part in the violence.

Violent attacks on Gypsies and the central government's utter failure to respond was another serious human rights problem in Romania in 1991. The Ethnic Federation of Roma, a federation of Gypsy organizations, estimates that over one hundred Gypsy homes were burned and one Gypsy killed in at least eight separate attacks in 1991. Since the 1989 revolution, over 250 Gypsy homes are estimated to have been burned and five Gypsies killed in at least twenty separate attacks. *or destroyed*

In Bolintin Deal, for example, following the stabbing death of a Romanian villager by a Gypsy, villagers burned twenty-two Gypsy homes and destroyed another five on April 7. Helsinki Watch received eyewitness reports that the mayor and local priest were direct instigators of the arson attack. There is also substantial evidence that the mayor knew of the plan to burn the Gypsies' houses several hours before the attack occurred and, while he warned the Gypsies to flee, he did nothing to protect their property.

The central government has abdicated all responsibility for protecting the rights of Gypsies, despite a need for intervention. In Bolintin Deal, as in every other incident investigated by Helsinki Watch, the local police did nothing to protect the homes and property of Gypsy citizens. Nor have local authorities taken any steps to guarantee the safety of Gypsies who want to rebuild their homes. Several local leaders expressed a desire to prevent Gypsies from ever returning to their villages. Other local authorities implied that they were afraid to take a stronger stand in support of Gypsies because of the intense anti-Gypsy sentiment among Romanian villagers.

None of the various acts of vigilante violence against Gypsies has been punished. Helsinki Watch did not learn of a single Romanian villager who had been arrested or tried for attacks on Gypsy communities. Villagers' increasing confidence that they will not be held accountable for violence against Gypsies creates an atmosphere that only fosters further attacks.

During 1991, tensions continued to mount between the ethnic Hungarian minority and Romanian majority. Anti-Hungarian sentiment was prevalent in the Romanian press and broadcasting media. Human rights groups in Romania reported that Hungarian defendants were increasingly unable to obtain a fair trial, especially in areas of high ethnic tension such as Tirgu Mures, where violence erupted in 1990 between ethnic Hungarians and Romanians. Helsinki Watch also received reports from lawyers that their ethnic Hungarian clients were beaten and mishandled by the police solely because they were speaking Hungarian within hearing distance of police officers.

Government censorship of the press has been largely eradicated in Romania. Newspapers critical of the government flourish without government interference. However, the press continues to encounter serious economic difficulties due to problems of distribution and a lack of affordable paper and printing technology. On March 29, the Romanian government announced a sharp increase in the cost of newsprint. This was followed, on April 27, with a fifty percent increase in the fee charged for distributing newspapers. Opposition newspapers have accused the government of economic censorship by granting subsidies to the pro-government press that ensure its access to newsprint and printing technology. The increased costs have forced many independent newspapers and journals out of business, but the increases appear to have had relatively little effect on the pro-government press.

The Romanian Television, which is decidedly pro-government in tone, is the only television station with national broadcasting ability. Its political bias continued to be a focus of protest and controversy in 1991. In early February, its leadership announced a cut in broadcasting hours for financial reasons. However, instead of cutting programming across the board, the leadership reduced the air time for only opposition and minority programming. In addition, a portion of the Hungarian-language programming was transferred to a second channel, which is not received in Transylvania where the largest segments of the Hungarian minority live.

This reduction of minority programming underscored once again the necessity of establishing an independent television station in Romania. On September 11, after much delay, the Society for an Independent Television received authorization to broadcast one hour per day, four days a week, on Romanian Television. Several independent local television stations with limited broadcast range were also established in 1991. However, an independent national television station is still a distant

goal.

In February, for the second time in the course of six months, the Romanian government introduced a draft press law which would have severely restricted freedom of the press. The draft, which had been approved by Prime Minister Petre Roman, provided, "Defamation in the media of the President of Romania, the judicial bodies, the courts, the government, the army, or any other public authority is punishable by a prison term of two to five years or a fine of between 200,000 lei and 500,000 lei [the equivalent of approximately \$700 to \$1,900]." After international and domestic protests, the government withdrew the draft law on March 19.

The Romanian Constituent Assembly completed its work on a draft constitution on July 9. On November 22, the Romanian Parliament approved the new constitution by a vote of 414 in favor, 95 against and 1 abstention, with the main opposition parties opposing the charter. A referendum was held on December 8 to approve the charter, amid protests by opposition political leaders that there had not been enough time for preparation. Some political leaders also protested that a referendum had not been called on whether Romania should have a republican or monarchical form of government. The Constitution is a considerable improvement over previous versions. In most respects it guarantees individual freedoms, but it weakens this protection by adding unnecessary and overly broad exceptions. For example, Article 23(4) provides that a person cannot be kept under arrest for more than thirty days, and adds that "an extension of the period of confinement shall be approved only by a court of law." But no limitation is set on the number of extensions that the court may grant or the circumstances under which an extension is permitted. Article 27 guarantees the inviolability of one's domicile and place of residence, but it also contains an extensive list of exceptions, including for any "defense against a common danger."

Legislative efforts to restrict intelligence gathering and surveillance have been inadequate. For example, while the Law on National Security requires a warrant from the prosecutor's office before telephones or mail can be monitored, the grounds for such a warrant are very broad. For example, telephones or mail can be monitored if there is a "threat to national security," defined to include "initiating, organizing, committing or supporting in any way, totalitarian acts, of a communist, legionnaire or fascist, racist, anti-Semitic, revisionist, or separatist type." Furthermore, the law provides that the Ministries of Interior, Justice and Defense may conduct their own intelligence gathering, without defining the scope of

these activities. Such legislation has obvious potential for abuse, particularly given Romania's history of suffering at the hands of an unrestrained security police.

On September 4, the Romanian Parliament considered a bill which would ban public demonstrations that, among other things, propagate totalitarian, fascist or chauvinistic ideas or "any other action running counter to national security, infringement on public order, security or morals, on civic rights and liberties or endangering of citizens' health." The draft law is troubling because it would prohibit citizens from organizing peaceful demonstrations solely because of the ideas being espoused, thus restricting a whole range of speech that is protected under international law.

The Right to Monitor

Human rights organizations were not formally barred from operating in Romania during 1991. These groups, including Helsinki Watch, were able to maintain staffs in Romania for extended periods without open government interference. Fact-finding missions were conducted by international and Romanian human rights monitors. Nevertheless, as discussed above, human rights leaders received threatening telephone calls and letters in 1991. Individuals working with Helsinki Watch were threatened over the telephone to stop working on issues concerning minority rights. The Bucharest-based League for Human Rights continued to receive death threats in the mail and over the telephone.

U.S. Policy

In many respects the Bush Administration has supported the cause of human rights in Romania by keeping pressure on the Romanian government to improve its human rights record. Relations between the Bush Administration and the Romanian government cooled decidedly after the miners' rampage in June 1990 and remained icy until the middle of 1991. On several occasions in early 1991, the Bush Administration publicly expressed serious reservations about the human rights record of the Romanian government. For example, on March 13, State Department spokesman Richard Boucher said that the U.S.

government had questioned the necessity of a press law in Romania, and added that the Bush Administration was concerned about recent statements by Romanian officials that appeared designed to intimidate the independent press. Interpreted by Romanian and foreign journalists as a symbolic gesture, Vice President Dan Quayle did not visit Romania during his tour of Eastern Europe in early June.

Secretary of State James Baker received Prime Minister Petre Roman in Washington on April 16. During a press conference following the meeting, Secretary Baker announced that he had used the occasion "to encourage the Romanian government in [its] efforts toward reform and the efforts that [it is] making toward political pluralism and to establishing a free market economic system."

However, the Bush Administration has failed to raise publicly the violent attacks against the Gypsy minority in Romania. Given the extent of the violence and the frequency of its occurrence, this omission is troubling. The violence against Gypsies, like the miners' violence in June 1990 and September 1991, is in part a direct consequence of the Romanian government's inability or unwillingness to apply the law equally to all segments of society.

As the year progressed, relations between the two countries gradually improved and contacts increased. Visits to Romania in early July by U.S. Permanent Representative to the United Nations Thomas Pickering and Assistant Secretary of State for Human Rights and Humanitarian Affairs Richard Schifter seemed to indicate a thaw in U.S.-Romanian relations. During his visit, Secretary Schifter met with President Iliescu and later stated, "I can say that America will change its attitude towards Romania in the very near future."

The Romanian government continued to raise the question of Most Favored Nation (MFN) trading status. By late July, Administration officials were beginning to hint that Romania could expect to receive MFN status in the near future. During a visit to Bucharest on July 30, John Robson, U.S. deputy secretary of the Treasury, stated, "I'm optimistic that the restrictions can be waived in a matter of weeks, not months." Finally, on October 28, representatives from the United States and Romania signed a new commercial agreement in Washington granting Romania MFN status. The agreement must still be ratified to take effect.

The U.S. Embassy in Bucharest has maintained contact with a wide range of Romanian citizens and has worked to support human rights groups and civil society. U.S. financial assistance to Romania has been

directed largely to support democratic institutions and political pluralism. In August, the U.S. Information Agency sponsored a workshop in Romania which brought together American and Romanian judges to discuss freedom of the press, criminal procedure and other legal issues. Two lawyers arrived in Bucharest in mid-October under the auspices of the State Department to spend a year working with local lawyers and judges. The National Democratic and Republican Institutes actively worked with Romanian political parties in preparation for the constitutional referendum and the elections now scheduled for early 1992.

In fiscal year 1991, the United States appropriated \$40 million worth of food assistance and \$1.5 million for assistance to institutionalized children in Romania. Fourteen Peace Corp volunteers also serve in Romanian orphanages.

The Policy of the Council of Europe

The Council of Europe has played a positive role in supporting respect for human rights in Romania and has exhibited a commitment to continued monitoring of human rights issues. Throughout 1990, the Romanian government sought observer status in the Council but consideration of the application was delayed due to Romania's poor record on human rights. In June 1990, the Council representatives reported that they had outlined to the Romanian government the Council's human rights concerns. Members of the Council paid several visits to Romania during 1990. According to statements made by Council envoys in Bucharest, they continued to raise human rights issues with the government.

In January 1991, the Romanian parliamentary commission investigating the June 1990 events released its findings, satisfying one of the Council's conditions for considering Romania's application. On February 1, the Council granted Romania observer status but amended its rules to provide for periodic review of human rights developments in Romania. As one Council member reported, members were aware that "Romania was not up to the Council's mark when it came to democratic reform and the implementation of human rights."⁸

⁸ Radio Free Europe, February 22, 1991.

The Work of Helsinki Watch

Helsinki Watch closely monitored human rights developments in Romania during 1991. Helsinki Watch sent four missions to Romania during the year and stationed a staff member in the country for extended periods.

Helsinki Watch began the year by reviewing the human rights situation in Romania one year after the revolution. A report entitled *Since the Revolution* was issued in March 1991. It concluded that the human rights situation in Romania did not meet the high expectations that existed after the violent overthrow of the Ceausescu government and that Romanians continued to live in fear that they might lose their fragile freedoms. The report documented numerous violent events during 1990, and criticized the Romanian government's failure to seek accountability for gross human rights abuses committed under the Ceausescu government and its failure to clarify the status of former Securitate members.

Two Helsinki Watch representatives visited Romania during February and March 1991 to follow up on the aftermath to the violent events of June 1990 and the parliamentary commission's report on that violence. In May, Helsinki Watch issued a newsletter entitled *Aftermath to the June Violence*, which provided additional testimony on the treatment in detention of those who had been arrested in June. The newsletter criticized the Romanian government for having failed to investigate the role of the police and army, as well as the many acts of violence committed during the rampage by miners and unidentified people in plainclothes.

Helsinki Watch focused much of its efforts in 1991 on the treatment of Gypsies in Romania. In May and July, Helsinki Watch conducted missions to Romania to interview Gypsies who had been victims of violent attacks. Helsinki Watch representatives also met with government officials at the local and national level, as well as with police and parliamentarians responsible for minority issues. In October, Helsinki Watch issued *Destroying Ethnic Identity: The Persecution of Gypsies in Romania*. The report concluded that violent attacks against the homes and persons of Gypsies, and the failure of the Romanian authorities to provide protection against such violence, are a serious human rights concern. Helsinki Watch reported that police and local officials played a questionable role in many of the attacks and apparently participated in several attacks by calling villagers together and urging them on. Helsinki Watch called on the

Romanian government to guarantee the security of all persons from bodily harm regardless of ethnic origin, including Gypsies who want to return to their villages and rebuild their homes. Helsinki Watch also called on the Romanian authorities to conduct an investigation into the official failure to protect Gypsies under attack and into each incidence of violence against the Gypsy community.

In October, Helsinki Watch sent a mission to investigate conditions in Romania's prisons. Representatives visited eight prisons, a reform school for juveniles, and several police lock-ups. They also met with representatives from the Ministry of Justice and members of the Directorate of Prisons. In addition, they conducted interviews with lawyers, current and former inmates, and human rights groups monitoring prison conditions in Romania. A report on the mission's findings will be issued in early 1992.

A Helsinki Watch staff person was in Romania for extended periods during 1991, to monitor human rights developments firsthand and to keep in regular contact with local human rights organizations, as well as minority rights groups and civic associations. Helsinki Watch representatives raised human rights concerns during numerous meetings with Romanian government officials. Helsinki Watch reports were discussed in the Romanian media, and interviews with Helsinki Watch representatives were broadcast in Romania. Helsinki Watch's office in Bucharest also tried to facilitate the dissemination of information on human rights abuses by working with other international organizations interested in Romania. In December, Helsinki Watch honored Nicolae Gheorghe, a sociologist and Gypsy leader from Romania, at its annual events honoring human rights monitors from various parts of the world.

SOVIET UNION⁹

Human Rights Developments

The year 1991 saw the destruction of the Soviet Union as a political entity, a process that seemed to be culminating at year's end. The strong pro-independence vote in the Ukrainian referendum on December 1, following the failure of Soviet President Gorbachev in his various efforts to create a new political union, led to a meeting on December 8 involving Russian President Boris Yeltsin, Belorussian Supreme Soviet Chairman Stanislau Shushkevich, and Ukrainian President Leonid Kravchuk at which they established a commonwealth of independent states open to all republics of the former USSR.

The new commonwealth will strive for coordination in foreign policy, development of a common economic space, customs and migration policies, transport and communications, ecology and the struggle against crime. Although Soviet President Gorbachev promptly declared this proclamation illegal, within days the parliaments of the three Slavic republics had ratified the commonwealth, and the four Central Asian republics plus Kazakhstan said they wanted to join the commonwealth. At the time of this writing, Yeltsin had announced that ten of the 12 remaining republics would join the commonwealth by the end of the year, and that President Gorbachev had no place in the new commonwealth structure.

⁹ This chapter includes developments in all of the geographic entities that were seen as part of the Soviet Union for most of 1991. The only exception is the separate chapter accorded to discussion of post-August 19 events in Latvia, Estonia and Lithuania, after the three Baltic states were given wide international legal and diplomatic recognition of their sovereignty.

Human Rights Watch takes no position on the issue of self-determination, although it upholds the right to advocate independence. Our separate treatment of the post-coup Baltic states reflects our interpretation of the prevailing international view of claims of sovereignty and our assessment of *de facto* power in these areas after the August events. The formation of a new Commonwealth of Independent States was announced just as this publication was going to press.

The three Slavic republics that launched the commonwealth, as founding members of the Soviet Union and signatories of the 1922 state treaty, proclaimed the end of the USSR "as a subject of international law and a geopolitical reality." Articles in the commonwealth agreement proclaim that USSR laws are henceforth invalid on their republic territory and that USSR organs will cease their activities in these republics.

The disappearance of the central government ministries — the Ministry of Internal Affairs, the Procuracy, the Ministry of Justice — will have a marked effect on human rights. The rather extensive reforms of, for example, the Criminal Code, are now left to the discretionary power of the republic governments. The human rights picture will become as multi-faceted as the newly powerful republics.

The republics have confirmed their "commitment to the goals and principles of the United Nations Charter, the Helsinki Final Act and other documents from the Conference on Security and Cooperation in Europe" and their obligation "to observe common international norms on human and national rights."

Several articles of the commonwealth declaration proclaim specific human rights commitments. The major such proclamation is in Article Two:

The agreeing parties guarantee their citizens, regardless of nationality or other differences, equal rights and freedoms. Each of the agreeing parties guarantees citizens of other parties and also people without citizenship who reside on its territory, regardless of nationality or other differences, civil, political, social, economic and cultural rights and freedoms in accordance with common international norms on human rights.

The human rights pledges in this article represent a welcome beginning for the new commonwealth. Particularly key is the promise of equal treatment under the law of all residents in republic territories. It remains to be seen, however, how well republic leaders will observe these pledges in practice.

Many events treated in this chapter occurred before the abortive coup of August 19, when the central government ruled — however ineffectually — over the Soviet Union. (For the sake of consistency and simplicity, the terms "Soviet," "Soviet Union" and "USSR" are used to refer to the region both before and after the August coup. Since the December 8

Commonwealth declaration, however, these terms have become part of history.)

The year began on a dismal note for human rights policies and practices in the Soviet Union. President Mikhail Gorbachev, who had largely abandoned democratic reform in the fall of 1990, tried to curtail freedoms of press and assembly and sanctioned a vicious crackdown in Lithuania and Latvia. High-level official advocates of liberal reform either resigned or were fired from the USSR government. The "war of laws" between Moscow and the republics signaled the center's growing ineffectiveness and the republics' determination to set their own course.

When Gorbachev returned to more democratic policies in the spring of 1991, he focused on drafting a new union treaty and securing Western aid for the desperate Soviet economy. On August 19, the day before the union treaty was to be signed by the participating republics, key right-wing members of the Soviet government, all Gorbachev appointees, declared a state of emergency and attempted to restore power to the center. Due to its plotters' stunning incompetence, and the lack of support for their move among key segments of the government, the coup failed after three days.

Had it succeeded, the coup could have totally changed the human rights picture in the Soviet Union, almost surely for the worse. Its failure, instead, ushered in political chaos, leaving considerable uncertainty about the protection of human rights. The collapse of the central government and the discrediting of the Communist Party of the Soviet Union (CPSU) empowered republic leaders, unleashing intense power struggles in some republics. In the post-coup period, it is feared that internal social and economic tensions and popular anger at undemocratic local leaders will more often find expression in bitter — if not violent — confrontation than in the painstaking, consensus-building work of democratic institutions. Moreover, participants in some of these political struggles are armed, an alarming development which imperils civilians and bodes poorly for democratic outcomes.

Nationalism has surged throughout the Soviet Union's myriad ethnic groups, encouraging republic leaders to take up nationalist agendas. In Georgia and Azerbaidzhan, for example, intensified struggles for power are exacerbating already lethal interethnic violence. No republic is ethnically homogenous. In some republics including the Russian Republic (RSFSR), ethnic minorities that have their own political-administrative units are waging intense battles for autonomy. Minorities without political representation fear discrimination. For example, Russians in many of the

non-Russian republics are leaving their homes in response to an anti-Russian mood. It is no surprise, therefore, that human rights violations increasingly involve the rights of ethnic minorities.

It is unclear who will win the political struggles and what kinds of governments will take hold in the republics. This turbulent political transition is particular cause for concern as power devolves to the republics and they assume jurisdiction over institutions with human rights mandates.

In the wake of the attempted coup, the central government avowed that respect for human rights was a priority in the Soviet Union. In September, the Congress of People's Deputies issued a Declaration of Human Rights and Freedoms. The document provides for a wide range of civil and political rights. Marking a clean break with socialism's emphasis on collective rights, no mention was made of group interests in the definition of the freedoms of speech, association, conscience, religion and assembly. In addition to civil and political rights, the Declaration sets out social and economic rights, including the right to work, property, education, sufficient living standards, and state support in housing and health protection.

In September, the Soviet government moved toward a more meaningful acceptance of international standards for human rights. At the Moscow Conference on the Human Dimension, part of the Conference on Security and Cooperation in Europe (CSCE), Soviet Foreign Minister Boris Pankin announced that the Soviet Union recognized international standards and no longer considered human rights an internal matter.

A September draft of the economic union of republics had invoked the Universal Declaration of Human Rights to require members to ensure equality of rights and freedoms for all people. However, the proposal adopted October 18 does not include this provision. The real impact of the formal developments described above thus rests with the republics and their creation and strengthening of independent legal institutions.

Many republics have taken legal steps to guarantee human rights. Republic declarations of sovereignty often include provisions to protect the rights and freedoms of all peoples living within the republics' borders. Armenia and Moldova have endorsed and ratified major international human rights documents, and at least six republics have parliamentary

human rights committees.¹⁰ It remains to be seen whether republics have the political will to make these measures effective.

Because the various republics keenly seek international recognition, they will likely apply for status in the CSCE. Georgia applied in the fall of 1991 for observer status but was rejected because of its poor human rights record; Armenia has also applied for observer status.

Official Use of Violence

While conducting research for its 1990 report on the December 1986 demonstrations in Alma-Ata, Helsinki Watch gained access to official materials setting out plans for "Operation Snowstorm." The type of military suppression of mass demonstrations outlined in these plans was first used in Alma-Ata, and may have set the pattern for four other suppressions.¹¹ The January 1991 attack by Soviet forces on the Baltic republics was consistent with the pattern of violence that Moscow had used during the glasnost years to suppress dissent when it threatened the Party's, or Moscow's, control.

USSR Violence in the Baltic Republics

Lithuania's declaration of independence in March 1990 set off a protracted struggle with the Kremlin. Throughout 1990, the Soviet government imposed economic sanctions and threatened to use force to compel Lithuania to conform to Soviet law. Capitalizing on political troubles within the Lithuanian government, at a time when the world's attention was riveted on the imminent war in the Persian Gulf, Soviet authorities used lethal force to attempt to oust the freely elected government of Lithuania and reestablish Soviet rule.

¹⁰ The Human Rights Committee of the Russian Republic's Supreme Soviet, jointly with the Inter-republic Relations Subcommittee of the republic's International Affairs Committee, issued a statement on September 11 expressing concern over developments in Georgia.

¹¹ These incidents took place in April 1989 in Tbilisi, Georgia; June 1989 in Kokand, Uzbekistan; January 1990 in Baku, Azerbaidzhan; and February 1990 in Dushanbe, Tadjikistan.

On January 8, a column of some one hundred military vehicles rolled through Vilnius. The next day, Soviet paratroopers flew from a nearby Russian military base, ostensibly to arrest draft dodgers. On January 11, Soviet army troops attacked and occupied Lithuania's press center and National Defense building, closed the Vilnius airport, and surrounded the radio and television transmission towers. Thousands of people massed at the Parliament building and the transmission towers to stage a nonviolent defense of these key buildings. On January 13, Soviet troops attacked crowds — estimated to number between twenty and sixty thousand — at the television tower and press center. In seizing these buildings, Soviet paratroopers killed fourteen unarmed civilians, several of whom were run over by tanks; two more Lithuanians died later of their wounds, and an estimated 508 were wounded, many with gunshot injuries and burns. Soviet forces did not try to seize the Parliament building, which was guarded by a human shield.

Using similar tactics, the Soviet government tried to force Latvia to reverse its declaration of independence. On January 2, the Riga press building was seized by the Black Berets — elite troops known officially as the Special Function Militia Unit, or OMON, who report to the Soviet and/or the republic-level Ministry of Interior. Although Soviet officials justified this action by claiming that the press center was Soviet property, their real goal appears to have been to silence the outspoken Latvian press. On January 13, the same day as the Soviet troop attack on the television tower in Vilnius, regular army and special paratrooper forces, escorted by tanks, marched through the streets of Riga. The next night, Black Berets, claiming to be searching for draft dodgers, invaded the local police academy, beat up ten cadets, and seized the academy's arms. On the night of January 16, the Black Berets beat up a volunteer unit guarding a bridge.

On January 20, Black Berets launched an unprovoked attack on the Latvian Interior Ministry with gunfire, including automatic weapons. Latvian militia troops guarding the building returned fire. Three of five people who died as a result of the attack — Andris Slapins, Gvido Zvaigzne and Edjis Riekstins — were unarmed and shot by sharpshooters in a nearby park. Slapins and Zvaigzne were both filmmakers; an investigative report by the New York-based Committee to Protect Journalists suggests that OMON troops targeted the journalists. A sixth death in Latvia occurred on January 16, when Soviet troops stopped Roberts Murnieks, chauffeur for the Latvian Ministry of Transportation, and shot him in the back of the head.

During the assault on the Interior Ministry, OMON troops seized five Latvians on weapons and "hooliganism" charges. The men, who claimed to have been completely unarmed, were beaten and forced to sign confessions admitting to terrorist activity.

Evidence strongly suggests that the violence was part of a plan, apparently drafted in Moscow with Gorbachev's approval, to overthrow the pro-independence governments in Lithuania and Latvia and establish direct presidential rule by Gorbachev, in league with National Salvation Committees that were simultaneously announced. During a meeting on January 8 with then-Prime Minister of Lithuania Kazimiera Pruskiene, Gorbachev refused to promise that he would not use Soviet troops to intervene in Lithuania. In a letter two days later to Lithuanian leaders, Gorbachev threatened direct presidential rule. After the attack on the television center on January 13, Lithuanian President Vytautas Landsbergis telephoned Gorbachev asking him to call off the paratroopers, but Gorbachev refused to come to the phone. The National Salvation Committee, which was said to have been formed in Vilnius on January 12 and claimed that it was taking over the government by popular demand, bore an eerie resemblance to front governments traditionally organized by Moscow, for example in Budapest in 1956. However, the plan was thwarted by vigorous popular protest and widespread international condemnation.

In the following months, harassment by Soviet armed forces continued in Lithuania and Latvia. On January 24, Soviet forces jailed four civilians without bringing substantive criminal charges, beat them during their detention, and released them after they promised not to file a complaint. A car that refused to stop at a military checkpoint outside Vilnius was followed by a column of armored personnel carriers. One of the Lithuanian drivers was shot in the back of the head by a Soviet soldier. On February 12, Soviet forces arrested three members of Shield, a military-reform group which had just released a report exposing the crackdown in Vilnius as a coup attempt by the CPSU and Gorbachev. Two of the three Shield activists were beaten during detention. A month later, OMON troops opened fire on a Lithuanian bus carrying unarmed border guards, injuring three people. According to testimony collected by the Lithuanian procuracy, the Soviet government's claim that the bus was carrying arms was unfounded.

From late January through July, a campaign of repeated OMON attacks on Baltic customs posts became the principal method of intimidating the independence-minded republics. Soviet soldiers attacked,

burned down, closed, or destroyed twenty-three Lithuanian customs posts along the Belorussian and Latvian borders; raided two Latvian railway customs posts; attacked and burned eleven Latvian border posts; and attacked and burned five posts in Estonia. In many cases, OMON troops beat the customs officials. Soviet Minister of Interior Boris Pugo denied OMON participation in the attacks, Gorbachev claimed to have no knowledge of plans for the attacks, and Soviet Procurator General Trubin called them unlawful. However, it is difficult to believe that these widespread and repeated attacks were ad hoc and had no sanction by any Soviet government office.

Armenians in Azerbaidzhan

In late April, Azerbaidzhani and Soviet military forces jointly launched a campaign of violence to disperse Armenian villagers from areas north and south of Nagorno-Karabakh, a territorial enclave in Azerbaidzhan where Armenian communities have lived for centuries. The official Soviet pretext for the military operation was to examine internal passports and apprehend members of Armenian paramilitary groups. However, the unstated goal was to "convince" the villagers — half are pensioners — to relocate permanently in Armenia.

The Soviet army title for this military action is "Operation Ring," because its basic strategy consists of surrounding villages with tanks and armored personnel carriers and shelling them. The next stage of the operation involves the entry of various troops (a combination of Fourth Army units and Ministry of Internal Affairs (MVD) Internal Troops), followed by the Azerbaidzhan OMON, who interrogate villagers, round them up, and arrest or take away male heads-of-households to prisons in other parts of Azerbaidzhan. Finally, Azerbaidzhani villagers are allowed to come and loot the empty Armenian villages.

More than ten thousand Armenian villagers have been forced to leave Azerbaidzhan. Forty people have died, more than half Armenian civilians. Helsinki Watch has documented several instances of brutality, including rape, by the armed forces (especially Azerbaidzhani OMON troops) while Soviet army units stood by passively. Dozens of Armenians are still being held in Azerbaidzhani jails, although there are regular prisoner and hostage exchanges with the Azerbaidzhanis. Armenian officials claim that many of those detained are beaten and ill-treated.

Operation Ring was particularly violent in the villages of Martunashen and Getashen in early May. According to Helsinki Watch

interviews with Armenian deportees and officials, eighteen villagers were killed, and Martunashen was razed to the ground. According to Armenian officials, the deportations in mid-July from the villages of Erkedj, Manashid and Bouzloukh in Azerbaidzhan resulted in three deaths among the Azerbaidzani MVD, many wounded, and the total dispersion of the population. In continued fighting in this area, 14 Azerbaidzhani OMON and one Armenian paramilitary fighter were killed in September.

On the day before the August 19 coup, the Soviet Army's 23 Division — which has a high percentage of Azerbaidzhani soldiers — as well as Azerbaidzhani OMON troops, conducted helicopter rocket attacks and directed artillery and machine gun fire at the large Armenian village of Verishen in Azerbaidzhan, near Karabakh. Two Armenian children were killed; there were deaths among Azerbaidzhani soldiers; and dozens of houses were burned, according to Radio Rossiya. On August 27, the Armenian villages of Karachinar and Verishen again came under missile and artillery fire, injuring four Armenians.

Fighting did not end in September as word spread of possible peace talks, described below. Two Azerbaidzhani OMON troops and one Armenian fighter were killed in Verashen on September 14. On September 15, the Azerbaidzhani OMON opened heavy fire on Karachinar, killing one Armenian civilian. As negotiations reached a final phase on September 25, OMON troops attacked the village of Chapar, killing six Armenian civilians, including a boy of fourteen.

Unfortunately, fighting in and around Nagorno-Karabakh continues. Radio Moscow reported on November 1 that Armenian paramilitary forces had launched a campaign to drive the Azerbaidzhani population out of Nagorno-Karabakh. Thousands were reportedly evicted from their homes. On November 1, the body of Azerbaidzhani Supreme Soviet Deputy, Eldar Bagirov, was found, the victim of apparent violence.

According to Armenian press reports, a new paramilitary group, the Popular Liberation Army of Artsakh (PLAA), an ancient name for Armenia, was formed in November. The PLAA claims to have united all armed groups of the Nagorno-Karabakh area, and was formed to prevent deportations from Armenian villages in the area. The PLAA, however, disavowed any intention to "harm the Azeri community in Nagorno-Karabakh," said it accepts the peace activities of the Russian and Kazakh observers, and denies any responsibility for shooting down the helicopter. (See below.)

Reports of continued hostage-taking by both Armenians and Azerbaidzhanis have appeared in the press. On November 30, the

Armenian news agency "Azg" reported that two Armenians taken hostage a month ago had been set free the previous day; during the previous ten days, 20 Armenian hostages had been released by the Azerbaidzhani government. Another article, in the Armenian newspaper *Yerkir* (December 12), reports that six Armenians were released from a jail in Azerbaidzhan in exchange for Azerbaidzhani Deputy General Procurator, Shukur Rzayev, who had been captured on November 14 from the Public Procurator's office.

Georgia¹²

Georgia is currently mired in hostilities pitting nationalist Georgian President Zviad Gamsakhurdia, a former political prisoner, and armed forces loyal to him against a nationalist political opposition allied with renegade parts of the Georgian National Guard calling for his resignation. Since his election in May, President Gamsakhurdia has presided over a wide range of human rights violations. On September 2, according to Western and Soviet Press reports, Georgian OMON troops used automatic weapons and truncheons to break up an unauthorized opposition National Democratic Party demonstration, injuring four people. *The New York Times* reported on September 3 that one demonstrator's lungs were pierced by a bullet.¹³ The crowd, which reportedly numbered about five thousand, was apparently unarmed and did not provoke the violence; when OMON troops fired shots into the air, the demonstrators responded by throwing stones. Opposition demonstrations continued throughout September and into October. Tbilisi police clashed with anti-Gamsakhurdia groups on September 22; two people were killed. Opposition sources claim that two protestors were killed by Georgian armed forces in clashes during a massive demonstration on October 4.

Armed conflict between Gamsakhurdia's forces and those elements of the political opposition that are armed further destabilizes Georgia. A reported eleven combatants — members of Georgian OMON forces, Georgian regular police, and the anti-Gamsakhurdia National Guard —

¹² See also the section on South Ossetia.

¹³ "Protestors Hurt in Georgia," as reported by Reuters in *The New York Times*, September 3, 1991

died in armed skirmishes during September and October. Each side blamed the other for the violence. President Gamsakhurdia has called on all civilians to surrender their weapons, threatening that criminal charges will be brought against those who do not comply.

As 1991 drew to a close, both sides in the Georgian political conflict developed projects to try to heal the breach. The Georgian government announced the creation of a Committee of National Accord and Defense of the Territorial Integrity of the Republic of Georgia within the Georgian Supreme Council, while a new opposition group, Charter 91, proposed a set of stabilization measures.

The new government-sponsored committee is to include leaders of all Georgian political parties and public organizations of the city, and administrative personnel. Any person, regardless of nationality, who is a resident of Georgia, may become a member of this committee. Those who join must advocate total economic and political independence of Georgia and preservation of its territorial integrity.

Charter 91 urged the Georgian Supreme Council to hold a referendum for people to choose their own state system and government; to reelect parliament before the term of the present body expires. The stated aim is to persuade all political groups in Georgia of the need to declare civil peace. The authors also suggest the suspension of mass rallies and demonstrations in return for governmental agreement to reinstate the law on political associations, legalize opposition parties and offer the opposition air time on republican radio and TV to express their views. Charter 91 also urges that an ethnic minorities council with legislative powers be established.

Tadzhikistan

On September 23, conservative forces in the Tadzhik government ousted Acting President Kadriddin Aslonov, a liberal who, in accordance with a post-coup Soviet presidential decree, had attempted to suspend Tadzhikistan's Communist Party activities in the republic. First Party Secretary Rakhman Nabiev was installed as president, and a state of emergency was declared the same day. In response, throughout September, thousands of protesters—including over two hundred hunger-strikers—camped outside the republic's Supreme Soviet building in a peaceful effort to change the republic leadership. In positive contrast to its actions during the February 1990 disorders in Dushanbe, the Tadzhikistan government declared that it would not use armed force to

break up the demonstration and that it is publicly committed to a peaceful resolution of this political impasse. The state of emergency was lifted on October 1.

The voters of Tadzhikistan elected a new republic president on November 25, with former First Party Secretary Rakhman Nabiev winning. According to the electoral commission, Nabiev received 58 percent, while Davlat Khudonazarov — USSR Supreme Soviet Deputy and Head of the USSR Cinematographers' Union — won 25 percent. It remains to be seen how Nabiev's election as president will influence the political stability of the Central Asian republic.

Armed Conflict and Inter-Ethnic Violence

Violence and armed conflict destabilized various areas of the USSR in 1991. In these conflicts, the role of the central or republic governments is often unclear. In some cases, for example in Chechen-Ingushetia, the emergence of an armed opposition movement heightens the possibility of intervention by Soviet or republic armed forces.

Armenia and Azerbaidzhan

According to Soviet army reports, from January to June 1991 there were 197 clashes between Armenians and Azerbaidzhani. The number of dead continues to rise, and includes journalists and Soviet and Azerbaidzhani officials. By September 13, 1991, according to Armenian Parliament Deputy Bagdasaryan, one hundred Armenians had been killed and 180 injured in Karabakh.¹⁴ In addition, both sides have taken hostages. These figures contrast with Soviet Army statistics, which report 12 dead and 41 wounded as a result of the Karabakh conflict.

Helsinki Watch, as well as journalists, have made repeated inquiries to Azerbaidzhani officials for overall figures on Azerbaidzhani casualties in "Operation Ring" and the Karabakh conflict. Other than claiming that "several hundred" Azerbaidzhani citizens have died, these officials have not given specific details.

Most of the Azerbaidzhani population in Armenia — a total of some 180,000 — were forced to leave that republic in 1988. This process was completed on August 8, 1991, with the eviction from Armenia of the last

¹⁴ These figures include casualties resulting from "Operation Ring."

of the Azerbaidzhani inhabitants of Nyuvedi. According to Radio Baku, the operation was directed by the Armenian Ministry of Internal Affairs and involved the killing of two officers stationed in the village.

Armenians have responded with violence to "Operation Ring." For example, after an "Operation Ring" armed attack on the village of Aterk on August 14, Armenian villagers reportedly seized thirty-one Azerbaidzhani servicemen, holding them hostage. They were ultimately returned to the Azerbaidzhani side in exchange for Armenian hostages.

Attacks by both sides included assassination attempts not only against high-ranking Soviet and Azerbaidzhani military officers and politicians. For example, Valery Grigoryan, former chairman of the Azerbaidzhan Communist Party Karabakh Autonomous Oblast Committee, was killed by unknown assailants at point-blank range on August 10, purportedly for his support for a political solution to the Karabakh problem seen by some as pro-Azerbaidzhani.

Popular anger also has been expressed in street violence. In one incident, reported by Radio Rossiya, an Azerbaidzhani cameraman was taken hostage in front of the building where peace negotiations were taking place. The Armenian crowd also mistook a Turkish journalist for an Azerbaidzhani and beat him severely.

In a positive development, the leaders of Kazakhstan and Russia mediated a preliminary agreement in late September between the leaders of Armenia and Azerbaidzhan that sought to settle the four-year conflict. Some of the main points of the final communique, signed by the four republic presidents, include:

- o a cease-fire.
- o the repeal, before January 1, 1992, of all unconstitutional Azerbaidzhani and Armenian legal provisions regarding Karabakh.
- o the withdrawal from the conflict zone of all armed forces, except units of Soviet Interior Ministry and Soviet Defense Ministry troops.
- o the selection of a group of observers to work out cease-fire measures and neutralize all illegitimate armed forces, as well as to develop safety guarantees for all civilians in the conflict zone and supervise the later stages in settling the conflict.

- o the commitment of Azerbaidzhan and Armenia to ensure the eventual return of deported peoples to their homes, starting with vacated villages, and to guarantee their safety.
- o the immediate release of hostages within a two-week period, after which hostage-holders will be subject to prosecution. Representatives of the mediators will monitor observance of these provisions.

After reaching this preliminary peace settlement, both sides continued negotiations. Two more negotiating rounds, described by both sides as slow but encouraging, were held in the first half of November.

These positive developments met an abrupt end on November 20 when a helicopter crashed carrying 21 high-ranking officials — mostly from Azerbaidzhan and Kazakhstan — to a new negotiating round. Azerbaidzhani officials claimed that this helicopter crash was caused either by a bomb or by a missile attack. Initial TASS reports indicated that the helicopter had crashed in a heavy fog, but later began referring to possible sabotage.

This tragic incident set back the cause of non-violence in the struggle between Armenia and Azerbaidzhan. Hundreds of thousands attended funerals in Baku for those who had died in the crash on November 22. Azerbaidzhani President Mutalibov declared that "things had gone too far" and that aggression against his republic would be stopped. The Armenian government called for an international investigation into the cause of the crash. Preliminary investigations by Azerbaidzhani ministries and the Soviet central government have been inconclusive.

In response to popular demands for retribution against Armenia, the Azerbaidzhani Supreme Soviet voted on November 26 to abolish the autonomous status of the Nagorno-Karabakh *oblast*, according to Western and Soviet press sources. The Armenian population presently and formerly resident in Nagorno-Karabakh voted overwhelmingly in a December 10 referendum for independence. The Azerbaidzhani population of the area boycotted the referendum.

The USSR State Council, at a November 27 session attended by the leaders of Armenia and Azerbaidzhan, called on Azerbaidzhan to restore Nagorno Karabakh's autonomous status. The resolution also called for the abrogation of all laws changing the *oblast's* juridical status, for a ceasefire and for the withdrawal of all illegal armed formations from the conflict zone.

According to a TASS item on November 28, the Armenian Foreign Ministry has asked the Azerbaidzhan government to search for ways to resume the political dialogue between the republics. Armenian President Ter Petrossyan has said that the newest round of peace talks should resume in Yerevan in early December.

South Ossetia

Political conflict between the South Ossetian Autonomous Region and the government of Georgia began in late 1990, when Georgia declared independence and announced its unwillingness to participate in the union treaty negotiations. Fearing that independent Georgia would jeopardize its separate nationality status, South Ossetia declared itself part of the USSR, rather than an autonomous region of Georgia. The Georgian Parliament reacted by voting on December 11, 1990, to abolish the South Ossetian Autonomous Republic.

Continued violence between armed groups of Georgians and South Ossetians has gripped the region since December 12, 1990, leaving more than 250 people dead and 480 injured (many with gunshot wounds), and creating 80,000 refugees, according to the Soviet press agency TASS.¹⁵ It is not known how many unarmed civilians are among the dead and how many died at the hands of Soviet and Georgian military forces.

A state of emergency declared by the Georgian government is currently in effect in Tskhinvali, the South Ossetian capital. South Ossetians report that the Georgian government has set blockades in the north and south of the region, preventing supplies, including humanitarian aid, from reaching Tskhinvali. Electricity, fuel and water supplies have been interrupted repeatedly and for long periods. Tskhinvali and villages of both Georgians and South Ossetians have been shelled sporadically.

It is unclear whether the Georgian government is directly involved in blockading and bombing Tskhinvali; the extent of the Kremlin's collaboration with South Ossetian attacks on Georgian villages is also unclear. Both sides are reported to have taken hostages and hijacked vehicles. The most intense period of violence was in March and April; after a period of relative calm in July and August, violence resumed in

¹⁵ TASS, October 18, 1991, as reported in the Federal Broadcast Information Service (FBIS), October 21, 1991.

mid-September.

Radio Rossiya reported on November 26 that the South Ossetia *oblast* council ordered the mobilization of all men aged 18 to 60. The council took this step due to concern over a rumored planned attack by local Georgians. Georgian military units, equipped with tanks, armored personnel carriers, rocket launchers and artillery reportedly were converging on the South Ossetian capital of Tskhinvali.

Two days later, on November 28, the South Ossetian *oblast* council declared the disputed region a republic. According to Radio Moscow, it also declared a state of emergency in the area. Three days earlier, the Georgian parliament had voted to lift the state of emergency declared in parts of the *oblast* one year ago and called for the withdrawal from South Ossetia of USSR MVD troops. In contrast, South Ossetia asked for the Soviet troops to remain on its territory.

Soviet MVD forces have been in South Ossetia since March to intercede and supposedly to disband armed paramilitary groups. Armed Georgian groups have clashed on at least one occasion with the Soviet MVD forces. In April, the Georgian government claimed that the MVD forces were collaborating with South Ossetians to kill Georgians, but the Soviet Interior Ministry rejected these charges.

Moldova¹⁶

The Russian and Ukrainian minorities in Moldova make up some 27 percent of its total population of 4.3 million. Fearing what they perceived as an excessively nationalist Moldovan government, in 1990 the leaders of these communities proclaimed the secession of the Dniester region — on the east bank of the Dniester river — from Moldova. The government of the Moldovan republic refuses to recognize the small breakaway unit. As a result, tensions in the area have been simmering throughout 1991.

The Trans-Dniester leaders took several measures in 1991 to try to prop up the independence of the "Dniester SSR," which Moldova refuses to recognize. On August 7, they defied the Moldovan language law by issuing a decree to guarantee the study of Moldovan in the Cyrillic script rather than the Latin script now used for Moldovan-Romanian. They also considered adopting their own constitution.

¹⁶ Formerly referred to as Moldavia.

In September, these measures by Dniester activists grew more dangerous: on September 25, armed Dniester "worker detachments" seized the Moldovan police building and other government buildings of the Dubasari district and cut off telephone and other communications.

Moldovan police officers in six districts of the left bank of the Dniester River have been pressured either to quit or to join Trans-Dniester. Pressure tactics include physically intimidating their families. Other activities of the Trans-Dniester partisans include a blockade of railway stations to demand the release of their leaders.

On September 19, the Russian Republic's Supreme Soviet sent a delegation to Moldova to monitor the situation. Its investigation found nothing to substantiate claims that Moldova violated the human rights of the Dniester Russians. To the contrary, the Russian Supreme Soviet Delegation accused the Trans-Dniester leaders of violating the rights of Moldovans in Trans-Dniester by restricting Moldovan-language education. (Moldovan is now the official language of the republic and it now uses Latin script.)

On September 27, the Trans-Dniester organized its own armed People's Guard, which consists of some eight hundred men. Moldovan officials claim that these forces have stockpiled arms, including mortars. This development increases the likelihood that the Dniester Russians' political claims will result in civilian casualties. Indeed, on December 13 western news agencies reported that 13 people had been killed and wounded that day in a struggle for control of the city of Dubasari, in the Trans-Dniester area. Soviet news agencies said police of the Moldovan-majority government had fought with militia of the Russian-speaking minority there. Preliminary reports say there were casualties on both sides.

Chechen-Ingushetia

Chechen-Ingushetia is an autonomous republic in the North Caucasus area within the RSFSR. The population of this autonomous area, according to the 1989 census, is 1,338,000—of whom 735,000 are Chechen and most of the rest are Ingush. After the August 19 aborted coup, during which the leadership of Chechen-Ingushetia appeared to support the coup leaders, a crisis of legitimacy developed in Chechen-Ingushetia. The discredited autonomous republic Supreme Soviet, representing traditional Soviet power, rapidly lost popular support to a new nationalist group, the Executive Committee of the All-National

Congress of the Chechen People, led by retired Soviet Air Force General, Dzhakhar Dudaev. Under Dudaev's leadership, the Chechen nationalist movement has become increasingly radical in its demands, ultimately pressing for independence from the Russian Republic.

In response to increasing anarchy and tension, on November 8, Russian Republic President Boris Yeltsin signed a decree declaring a state of emergency in Chechen-Ingushetia. The decree imposes direct presidential rule, bans all meetings and demonstrations, puts strict controls on entering and leaving Chechen-Ingushetia, and orders the confiscation of all firearms. President Yeltsin has deployed about 2,500 troops to Chechen-Ingushetia to enforce the decree.

President Yeltsin's decree resembles Gorbachev's responses to various Soviet republics' struggles for autonomy. But because it sparked widespread criticism in the Russian government and armed resistance on the part of the Chechens, the state of emergency was not implemented or enforced. An overwhelming majority of the Russian Republic's Supreme Soviet refused — in a non-binding vote — to approve the decree. The Russian Republic's interior minister, Vakha Ibragimov, resigned to protest the decree, and Akhmed Arslonov, whom Yeltsin appointed as interim administrator of Chechen-Ingushetia, and who served as the Russian Republic's representative there, urged Yeltsin to lift the state of emergency.

The Chechen resistance, led by General Dzhokhar Dudaev, a retired Soviet air force general, prevented the implementation of the state of emergency. Thousands of civilians were reported to have blockaded Soviet Interior Ministry troops inside the Interior Ministry building, and the republic's national guard was deployed at the airport in Grozny, the capital, to prevent the arrival of additional troops.

Tensions between the Russian Republic and Chechen-Ingushetia began in late August, when crowds of Chechens accused the leaders of Chechen-Ingushetia of supporting the August 19 coup attempt. Led by the Executive Committee of the All-National Congress of Chechen People (NCCP), they demanded the republic leaders' resignation, seized key government buildings (including the KGB headquarters and other law-enforcement buildings), took control of the media, and blockaded the republic's Supreme Soviet. On September 13, the Supreme Soviet was dissolved, a provisional parliament was formed, and a date was set for new elections. The NCCP, under the leadership of General Dudayev, formed its own National Guard.

The Russian government called for all armed formations to disarm. The NCCP ignored the call and, on October 9, seized power from the provisional government in Grozny. Following skirmishes between it and supporters of the provisional government, the NCCP called for a general mobilization of all males between the ages of fifteen and fifty-five and put the National Guard on "high alert." One armed clash left a civil servant injured, but no other civilian casualties have been reported.

Prisoners in a Grozny jail staged an uprising in early October, demanding that they be allowed to serve in the National Guard and that their sentences be revoked. In circumstances that are not clear, the National Guard was reported to have ended the uprising, killing one prisoner and injuring five.

On October 19, Boris Yeltsin ordered the National Guard to disarm, threatening vague measures to "normalize" the situation. The NCCP continues to ignore the order and warns of an "Islamic Holy War" if Russia does not end its "interference" in the republic's affairs. The Russian Republic's Supreme Soviet adopted a resolution late in October ruling illegal the scheduled October 27 presidential elections in Chechen-Ingushetia.

Although deemed illegal by Russian Republic authorities, presidential elections in Chechen-Ingushetia were held on October 27. Former General Dudaev was declared the winner of the election. *Izvestiya* suggested the results were invalid since no special electoral commissions had been set up outside the main city, while the NCCP declared it did not matter how many people had actually voted.

As for the situation of the Ingush in Chechen-Ingushetia, they have pressed for the return of lands in North Ossetia (the Prigorodny *rayon*) from which they were deported in 1944. During the Third Congress of the Ingush People, Russian Republic Vice President Aleksandr Rutskoi proposed that the issue of the return of Prigorodny *rayon* to the Ingush be decided by a congress of North Caucasus elders, promising he would try to organize it. The Ingush congress voted to press for the immediate return of this area in North Ossetia.

The Ingush decision caused great concern in North Ossetia, TASS reported on October 9 that there were demands for the creation of a North Ossetian national guard. An appeal to the USSR and Russian Republic authorities was published in the North Ossetian press on October 10, asking for immediate steps to protect the population.

The state of human rights in Chechen Ingushetia under Dudayev's rule remains unclear. Some Russian republic press reports allege that the

National Guard intimidates television broadcasters. Local television journalists reportedly went on strike in early November to protest interference in the media.

The policies adopted by the Russian Republic in addressing the Chechen-Ingushetia independence drive could serve as a precedent for its dealings with other independence-minded autonomous republics within the Russian republic, notably Tataria, where tension is also running high.

Freedom of Expression, Assembly, and Association

The Soviet Government

Among the targets of President Gorbachev's turn to the right in the winter of 1990-91 were the increasingly critical Soviet media. In November 1990, Gorbachev appointed the conservative Leonid Kravchenko to head Gosteleradio, the state television and radio monopoly. Upon assuming his post, Kravchenko promised to "serve the president's will," and upheld this promise with an active censorship policy. In early January, he prohibited "Vzgliad," an enormously popular television program, from broadcasting an interview with Shevardnadze, conducted after his stunning December resignation as foreign minister; on January 11, he suspended the program indefinitely. He also banned the highly popular television programs "Seven Days" and "Fifth Wheel." On January 10, Soviet officials closed Interfax, a Moscow-based independent news agency housed in a Gosteleradio building. Gosteleradio cited financial disputes for the closure, but Interfax claims that the motive was political.

During the crackdowns in Lithuania and Latvia, Soviet armed forces sought first to control the media. Military units took over the main press buildings in Vilnius and Riga to "preserve" them from local governments and allegedly to protect the CPSU's property rights. Press workers went on strike, and newspapers almost vanished from Latvia for several days. Because the Soviet military took over the main television tower in Vilnius, for months Lithuanians had to rely on television and radio transmissions from Kaunas or Riga. The suspicious circumstances surrounding the deaths of Latvian filmmakers Gvido Zviagzne and Andris Slapins, noted above, suggest that journalists were singled out for violent attacks.

The Kremlin's drive against freedom of expression extended throughout the USSR at the time of the bloody events in Lithuania and Latvia. The official media distorted the events, and the central government censored contrary coverage. For example, contrary to eyewitness accounts, the announcer for "Vremya" — the main television news program of the Soviet government — described the killing of unarmed civilians as "defensive." Four anchors for Television News Service quit the program because of increasing censorship; they told of having to read prepared government scripts describing Soviet activities in the Baltic republics.

On January 18, many liberal TASS correspondents in Leningrad were fired. Gorbachev requested the USSR Supreme Soviet to suspend the 1990 Law on the Press, which affirms the right to free expression and prohibits almost all censorship. Under pressure from liberal deputies, Gorbachev backed down, but he succeeded in authorizing the Supreme Soviet to develop "measures to ensure objectivity" in news coverage.

In addition to using censorship, the central government has kept the independent media in check through discriminatory allocation of scarce newsprint and other publishing supplies, which in any case are subject to severe and chronic shortages in the Soviet Union. Official newspapers have enjoyed an enormous advantage over their independent counterparts, which have to pay inflated prices for newsprint.

The Soviet "anti-Presidential slander" law remains on the books. Adopted in 1990, the law authorizes a maximum six-year prison term for those convicted of "indecent" slander of the Soviet president. In March, Valeriya Novodvorskaya, leader of the radical citizens' group Democratic Union, was charged under the law and acquitted.

During the conservative swing, the government also attempted to restrict freedom of assembly. In late March, it went against the Moscow City Council and tried to ban demonstrations, strikes, picketing and other gatherings in Moscow, in violation of international and Soviet law on freedom of assembly.

A May 1991 Law on the Resolution of Collective Labor Disputes significantly curtails the right to strike for labor unions. Under the law, labor strikes are permitted as a last resort and only for a limited number of disputes. The law bans strike activities in many industries, including railways, city transport, communications, and defense industries. It also sets out vague restrictions on strikes in other industries, such as a prohibition on strikes that would "threaten people's health" or "have severe consequences."

Those behind the August plot to take over the Soviet government sought to crack down on freedom of expression. Claiming that the media "bore much of the responsibility for the current chaos," Gennady Yanaev, acting president of the coup's Emergency Committee, published a list of a few newspapers permitted to publish, and banned all others. Yanaev also ordered the RSFSR television channel to carry Central Television programs and sent troops to stop certain radio broadcasts in Moscow and Leningrad. Paratroopers were also sent to seize Tallinn's television tower, and Radio Riga reported that its tower had been taken over by OMON troops. Despite these measures, however, many journalists ignored the coup leaders' crackdown on the media.

On August 22, after the coup had failed, Boris Yeltsin issued a decree with a clause suspending *Pravda*, *Sovietskaia Rossiya*, *Glasmot*, *Moskovskaia Pravda*, and *Leninskoye Znamya* — all Party-controlled newspapers — and nationalizing the property of all Party publishing houses. The decree claimed that the papers had "actively supported" the coup. Since under the Soviet Law on the Press only a court has the right to confiscate media property and ban circulation, these actions raised wide and outspoken concern that Yeltsin had gone beyond his constitutional authority. After a storm of protest, Yeltsin suspended the decree's clause on September 11, and the RSFSR Supreme Soviet presidium declared null and void all further attempts to confiscate Party property.

In the Republics

After the coup, the RSFSR, Ukraine, Tadzhikistan and Georgia agreed to suspend the activities of the CPSU,¹⁷ pending investigation of the Party's involvement in the coup.¹⁸ Gorbachev agreed to have the offices of the CPSU Central Committee sealed, authorized all CPSU property to be turned over to local soviets, and confirmed Yeltsin's ban

¹⁷ In late October, the Tadzhik Committee on Constitutional Oversight took a stand upholding freedom of association by protesting the ban that the Tadzhik Supreme Soviet had placed on the Tadzhik Communist Party. In its decision, the Committee argued that the Supreme Soviet had no legal basis for banning the Communist Party.

¹⁸ Just after the coup, Gorbachev issued a decree suspending Communist Party activity throughout the USSR, but not all republics implemented it.

on all political activities of the KGB, MVD and armed forces.

In early November, the 74th anniversary of the Bolshevik revolution occasioned two anti-Communist actions in the Russian Republic. Moscow city authorities refused to allow a demonstration by Communist and workers' organizations within the Moscow city limits. And on November 6, Yeltsin issued an edict disbanding the CPSU and the Russian Communist Party in the Russian Republic and banning their activities.

This anti-Communist backlash imperils freedom of association and assembly and raises fears about "witch hunts" for Communists in the USSR. In late October, the Russian Republic government violated freedom of association in relation to non-violent organizations of national separatists when the RSFSR Procurator's office outlawed all political parties and public organizations that called for "the violation of the RSFSR's territorial integrity." The move also violates Soviet law, because although the Soviet Law on Public Associations forbids organizations seeking "the forcible rupture of the territory of the USSR, the union and autonomous republics, and the autonomous formations," an organization can be outlawed only by a court of law. The procurator's office is only authorized to issue a warning to organizations that violate the law.

On November 5, the Georgian Supreme Soviet restricted freedom of association by voting to suspend temporarily the August 1990 Georgian law on political parties driving several parties underground. Governments in other republics also control and define the process of registration, so as to effectively outlaw groups that they believe threaten their interests. For example, Turkmenia has denied registration to two major opposition groups: "Agzybirlik" (Unity) and the Democratic Party. The Tadzhikistan government finally permitted registration of the Islamic Renaissance Party in October 1991. The Uzbek government closed "for health reasons" the Tashkent office of Birlik (Unity) — the Uzbek popular front movement which counts millions of members.

The republic governments of Georgia and much of Central Asia enforce monopolistic control over the media. The Tadzhik newspapers of the Popular Front, *Rastokhez*; (Renaissance) and the Democratic Party, *Adulet* (Freedom) can be printed only outside Tadzhikistan, while the weekly Union of Journalists newspaper *Sukhan*, according to local journalists, engages in self-censorship, because it fears loss of registration. Because of republic government control over the press, the Turkmenistan Popular Front could print only one issue of its newspaper in 1991 — in Moscow.

The Georgian political opposition complains that it is barred from all local media outlets. A small independent Georgian news agency, Iberia, was initially denied registration. The day after registration was granted in May 1991, the group was expelled from its office space due to government pressure and has been unable to find new quarters. After the appearance of an issue of an unofficial Georgian journal *Droni*, (Time), supporters of President Gamsakhurdia appeared at its offices and destroyed the journal's equipment.

There are several disturbing signs that press freedom may also be threatened in the Russian Republic. According to a *Christian Science Monitor* article (October 31, 1991), Vitaly Tretyakov, Editor-in-Chief of the respected new newspaper, *Nezavisimaya Gazeta* (The Independent Gazette), said his paper and *Moscow News* recently had been warned by the Russian Republic Press Ministry that they had violated the press law. Tretyakov said he had been told that an interview with the Ukrainian Deputy Prime Minister Konstantin Masik had, according to the ministry, shown "signs of war propaganda." The editor rejected this claim, saying the Masik interview had been found wanting because it contained criticism of the Yeltsin government.

After the draft Russian Republic Law on the Media was adopted by the Supreme Soviet on November 27, the Tass-Russian Information Agency reported two days later that representatives of the Russian Association of Independent Television and Radio Broadcasting were severely critical of its licensing procedures. Under this article (32) of the new media law, all TV and radio companies are obliged to allocate air time for Russian republic radio or TV programs. Mikhail Fedotov, Deputy Russian Republic Press Minister, rejected this criticism, saying it was standard practice for states to allocate air time.

In addition to denying media outlets to local political groups, the governments of Georgia and much of Central Asia also restrict access to media sources from outside their republics. For example, Turkmenia, Uzbekistan and Tadzhikistan block television transmission of "Rossiya" news programs. Such liberal publications as *Ogonyok* and *Moscow News* are not sold in Turkmenia and Tadzhikistan, while in Georgia subscribers to these and other similar magazines are not allowed to receive them.

The Georgian government has censored publications and broadcasts considered to be anti-Georgian. In a February press conference, President Gamsakhurdia declared that "journalists [in Georgia] may be deemed 'personae non grata'" for writing or publishing anti-Georgian articles or for "lacking objectivity." The Georgian government requested Radio

Liberty, based in Germany and the United States, to stop broadcasting to Georgia, and "Vremya" was taken off the air on April 7. The June 12 issue of *Izvestia* was not published in Georgia because it contained an article criticizing Gamsakhurdia and his policies. The Georgian government explained the incident by claiming that Georgian typographers had gone on strike to protest the "insults" conveyed in the article.

Journalists are harassed in Georgia. In September, TASS correspondent Albert Kochetkov was attacked and his office destroyed. In late May, TASS reported that five Georgian journalists complained to President Gamsakhurdia about harassment and being denied information from official sources. Two journalists allegedly were expelled from a press conference given by Gamsakhurdia; one claimed he was threatened with criminal charges for criticizing the president. Interfax reports that Gamsakhurdia sanctioned a campaign of harassing journalists by accusing them of being members of the MVD.

The Georgian anti-presidential slander law, adopted in May 1991, prescribes a maximum of three years imprisonment for individuals who publicly insult or slander the Georgian president, while journalists would have to serve up to a six-year prison term. Press organizations found guilty of these charges may be fined up to 25,000 rubles (about \$600 at the tourist rate of exchange) and may be closed if the slander is repeated. Helsinki Watch has not received reports of individuals or press organizations being tried under these charges. Anti-presidential slander laws also exist in Tadzhikistan and Turkmenia. Helsinki Watch was informed that a twelve-man censorship agency implements the Turkmenian anti-presidential slander law. In March, this agency vetted speakers' lists for the Turkmenia Writers' Congress.

A member of the Kazakhstan Popular Front, Bahytan Abirov, was brought to trial on October 9 for publicly insulting President Nursultan Nazarbayev. After charges were brought against him, Abirov reported that he was forcibly subjected to an examination at a psychiatric clinic. Leaders of the Kazakhstan National Independence Party (*Alash*) were also charged with "insulting the honor and dignity" of the president in October.

Freedom of Religion

The most unqualified improvements in civic freedoms in the Soviet Union took place in the field of religion. People of all faiths can now practice their religion without fear of government interference. One of the last elements of government intervention in religious practice was eliminated in early September, when the "Fourth Department" of the KGB, which had been responsible for monitoring religious organizations, was disbanded. The Fourth Department played a role in, among other things, approving archbishop appointments and membership in the Holy Synod of the Russian Orthodox Church.

About twelve thousand Russian Orthodox parishes now operate in the USSR. Missionaries of various faiths now proselytize in the Russian Republic. The Soviet government is returning churches, synagogues and mosques for religious use. The new freedom of religion has especially enlivened the practice of Judaism in the Soviet Union. People can now teach Hebrew without fear of arrest, and texts are being published in Hebrew. Local authorities in Moscow, Kiev and other cities have encouraged these positive developments.

In the fall of 1991, the Soviet and Ukrainian governments gave official recognition to the problem of anti-Semitism in the USSR. At a ceremony commemorating the fiftieth anniversary of the Babi Yar massacre, President Gorbachev issued a statement denouncing anti-Semitism, perhaps the first Soviet leader to do so. After Gorbachev's statement was delivered, Ukrainian President Leonid Kravchuk also made a strong statement against anti-Semitism. Despite this official denunciation, anti-Semitism still flourishes in the free press and civil society. The great strides in religion are, unfortunately, attended by the organization of anti-Semitic demonstrations and the publication of anti-Semitic articles and tracts by such right-wing organizations as *Pamiat* (Memory).

Freedom of Movement

Emigration and Travel Abroad

The long-awaited adoption in May of the Soviet entry-exit law¹⁹ represented some progress in the right to leave and return to the USSR." The law simplifies travel and emigration by removing the need to obtain invitations from abroad and reduces the number and scope of restrictions on travel. The practical effect of its provisions are now unclear, however, given the collapse of the Center's powers.

Unfortunately, the law also codifies serious limitations. Under Article 12, the Soviet government can deny an international passport to individuals deemed to have "information constituting a state secret" for up to five years from the time they were exposed to the secret. Moreover, Article 12 grants the Council of Ministers the right to establish an "expert commission" to extend the term in individual cases. Individual challenges to the classification of a state secret can be reviewed by a judge only once every three years. It is unclear who would appoint this expert commission, leaving open the possibility that its members would be less than objective in deciding what constitutes a state secret. Moreover, definitions of state secrets in the Soviet Union are notoriously vague.

The law authorizes the government to restrict travel by individuals who have civil suits pending in court or outstanding "negotiated contractual obligations." The government also can deny an international passport to individuals who have registered for enlistment until military service has actually been completed. In addition, to obtain an international passport citizens must present notarized copies of their labor record books, presumably to prove they have never engaged in work which required a security clearance, a requirement which unnecessarily complicates the application process. The law allows the Council of Ministers to promulgate additional rules on processing and issuing international passports, thus risking additional barriers.

The law provides administrative and judicial remedies to appeal denials of international passports. But due process in emigration matters is on shaky grounds in Soviet courts, which have questionable independence.

¹⁹ The law's official title is the Law on the Procedure for Entering and Leaving the Country.

Authorities in some republics now claim that they oversee the emigration process; in light of the collapse of the Soviet Central government each republic will implement its own policies in this regard.

On October 18, a new commission was formed to review the cases of those individuals who had left jobs which had exposed them to state secrets more than five years ago, but are still being refused permission to leave the country. In its first meeting, the commission — which consists of five officials from the USSR Foreign Ministry, the KGB, the all-Union Office of Visas and Registration, the RSFSR Parliament, and the Soviet-American Bureau on Human Rights (an affiliate of the Union of Councils for Soviet Jews) — could not agree on whether all such individuals should be granted permission to leave. Nor could it agree on which parliamentary body has the right to review former political prisoners' requests to leave the country.

Internal Movement

An internal passport system, administered by the USSR MVD or new republic replacements, regulates movement inside the Soviet Union and continues to operate. It is still unclear what legal standing it will have in the new commonwealth. Until now, Soviet citizens needed to obtain residence permits to live in a particular city and to secure legal employment, a clear infringement on freedom of movement. Sergei Alekseev, chair of the Soviet Committee for Constitutional Oversight, announced on October 11 that the committee found residence requirements "unconstitutional," and declared that they would be rescinded as of January 1, 1992.²⁰ The committee's decision allows the adoption of new residence regulations, but only if they conform with the minor restrictions on the freedom of internal movement allowed under Article 12 of the International Covenant on Civil and Political Rights.²¹

²⁰ The USSR Constitutional Oversight Committee has the right to suspend immediately any law that violates human rights standards of international or Soviet law. The committee was empowered to suspend residence requirements effective immediately, rather than January 1992.

²¹ Article 12 allows only such restrictions on freedom of movement as are "provided by law...are necessary to protect national security, public order, public health or morals and the rights and freedoms of individuals," and are consistent

The committee's decision, if enforced, would bring freedom of movement within the Soviet Union to line with international norms. However, since its inception, the committee's power has been tenuous. The newly formed RSFSR Constitutional Court could well adopt its own measure on residence requirements that may or may not follow the Soviet committee's guidelines. Moreover, some Russian officials are on record as wanting to retain residence requirements for Moscow and St. Petersburg to prevent a flood of migrants from overtaxing these cities' resources.

Deported Peoples and Displaced Persons

The *propiski* (residence-and-movement controls) system affects all Soviet citizens. Two groups are particularly affected: over a dozen Soviet nationalities that Stalin had deported en masse in the 1940s²² and persons forced to leave their homes in recent years due to civil strife and natural disasters.

National homelands were returned to some, but not all, of the deported peoples. The RSFSR Supreme Soviet adopted a law on April 26 that provides for the restoration of the territorial integrity of these homelands in the RSFSR to pre-deportation borders. The law also allows deported peoples who had no national territory to return to their former homes, and calls on the USSR, the RSFSR and the autonomous republics to compensate all deported peoples for the harm done to them.

In a welcome move by the central government, additional information on the deported peoples was made available on November 29. According to a TASS report, more than 600 files from the NKVD-MVD archives on the Stalin-era deportations of peoples from the Crimea, the North Caucasus and Transcaucasia have been opened up. One of these documents reveals for the first time official statistics on these deportations: from 1936 to 1956, 3.5 million people were deported.

with the other rights recognized in the Covenant.

²² Because he suspected them of collaborating with the Nazis during World War II, Stalin forced a dozen national groups to relocate to Central Asia and dissolved the administrative units that had constituted their ethnic homelands. The "deported peoples" include Volga Germans, Chechens, Ingush, Meskhetian Turks and Crimean Tatars.

A Helsinki Watch investigation in 1991 found that, despite the law, Volga Germans, Crimean Tatars, Meskhetian Turks and Soviet Kurds are still unwelcome in areas that used to constitute their traditional homelands.²³ For example, local authorities in Tatarstan and Georgia use the *propiski* system to refuse resettlement of Crimean Tatars and Meskhetian Turks.

Families of Crimean Tatars who, despite official refusal to grant them residence permits, returned to their homeland are forced to live in squatters' camps. In June, Helsinki Watch visited such a camp in Lugovoe, where 117 Crimean Tatar families live in primitive conditions. Because they cannot be legally employed, the Crimean Tatars at Lugovoe receive fifty rubles (a little over one dollar) per month per family member, which is barely adequate to buy food.

The *propiski* system prevented the Ingush, a national group native to the Caucasus, from living in territory in North Ossetia that had been taken from them in 1943.²⁴ In April 1991, a group of Ingush attempted to seize their former homes in North Ossetia, resulting in violence, at least one death, and the declaration of a state of emergency in the disputed area as in well as in Vladikavkaz, the capital of North Ossetia. More than 1,500 MVD troops were deployed from other parts of the RSFSR. Tensions in the area rose in mid-October, when the Executive Committee of Ingushetia proclaimed the Northern Ingush Republic on the right-bank part of Vladikavkaz.

The *propiski* system poses an extra hardship for the thousands of Soviet citizens who fled their homes in 1991 due to civil unrest, natural disasters or fear of ethnic discrimination. About eighty thousand people

²³ Some small progress took place during the summer of 1991 toward the resolution of the territorial claims of the Akkinsty Chechens, who had been deported in the 1940s from their homeland in what is now called Daghestan. The Chechens had been forbidden from returning to their territory, which is now occupied by Laks, another Caucasian people who had been forcibly resettled there by Stalin. In demonstrations during the spring of 1991 in Makhachkala, the capital of Daghestan, angry Chechens threatened to squat on the disputed land. Responding to the demonstrators' demands, the Daghestan Congress of People's Deputies convened to discuss the issue.

²⁴ Ingush claim that this land represents forty-seven percent of the territory of their former homeland.

in South Ossetia (both Ossetians and Georgians) were displaced by the combined effect of ongoing civil strife and the April earthquake. As a result of the violence in Nagorno-Karabakh and the forced evictions of Armenians from Azerbaidzhan and Azerbaidzhanis from Armenia, over 10,000 were displaced. Thousands of Russians who have lived for generations in the area are increasingly leaving Central Asia, and Kazakhstan, fearing discrimination. Without *propiski*, these displaced persons are often forced to live in "relocation" villages, where conditions are squalid, or to depend for housing on the generosity of friends or relatives. Because the government stipend for displaced persons is inadequate for survival, they often must seek marginal employment to support themselves.

Criminal Justice System

With the collapse of central political power in the USSR and elimination of the central ministries, republics gained control over many features of the criminal justice system, including penal codes, codes of criminal procedure, and the prison system. At this point it is too early to say how these developments will affect the major reform of the criminal justice system under way in the Soviet Central government in recent years. Respect for international standards on due process and prison conditions depends on the varying will of the republics to set and enforce such standards.

Due Process

Respect for due process has been weak in the Soviet Union. The right to counsel, while provided in theory, is ineffective in practice because police do not inform those arrested of their rights. Another and more extreme problem is the shortage of qualified defense lawyers. Interrogations in police lock-ups frequently proceed whether or not an attorney is present. The lack of an effective bail system and a sluggish criminal justice system force detainees to languish in decrepit pretrial detention centers, described below, for an average of four to six months. Many detainees remain in these facilities for an additional one and a half years.

The Soviet Presidential Decree of January 26, 1991 "On Measures to Combat Economic Sabotage and other Crimes in the Economic Sphere" violated the right of due process on its face. The decree sanctioned

searches without warrants of enterprises, organizations and production premises, including private residences if they are used for economic enterprises. The decree was to remain in effect until laws on the Soviet militia, security organizations and investigative operations were adopted. The Soviet-militia and security-organizations laws also permitted warrantless searches, although the law on security organizations was suspended after the coup. The law on investigative operations was never enacted. Nonetheless, the decree apparently remains on the books and can be invoked to conduct warrantless searches.

Prison Conditions

A 1991 Helsinki Watch mission to investigate prison conditions in the Soviet Union visited twenty-one facilities in the RSFSR and Azerbaidzhan, including pretrial detention facilities, police lock-ups, labor colonies, and post-conviction facilities. As elsewhere in the world, the worst conditions were found in the pretrial detention centers, where presumptively innocent people are held after their arrest and throughout their trial. Conditions in these facilities are appalling — often so overcrowded that prisoners have no room to walk in their cells. Frequently, there is virtually no ventilation, and fetid smells pervade what little air there is to breathe.

Conditions are relatively better in Soviet labor colonies, where most convicted prisoners are incarcerated. These facilities are not as severely overcrowded, ventilation is better, and detainees are granted more rights. Prisoners receive a wage for their work, but the money they must pay for their upkeep usually leaves them with little for themselves; since prisoners are compelled to work, many prisoners complain that colony work is a form of slavery. Prisoner rights activists claim that many sick and handicapped prisoners are required to work at onerous jobs for excessively long hours. The work assigned is for the benefit of the state economy rather than the rehabilitation of the prisoner.

The Soviet Interior Ministry used to control most prisons in the country. Before the coup, prison reform had begun to decentralize control over prisons and to yield modest improvements. The plan to eliminate the Soviet MVD by November 15 (along with seventy-nine other all-Union ministries) was summarily put in practice in December. Republic interior ministries will presumably assume complete control over the prisons.

Decentralized control heightens concern that prisoners charged in connection with inter-ethnic disputes, or who are members of minority ethnic groups, will be singled out for harsh treatment. In this connection, the mistreatment of Armenians in Azerbaidzhani pretrial detention centers has come under scrutiny. In March, the Azerbaidzhani MVD granted Helsinki Watch permission to visit a number of pretrial detention centers. In June, however, the same MVD denied Helsinki Watch access to the Giandzha and Shusha detention centers, where Armenians rounded up in "Operation Ring" were detained. Soviet and Azerbaidzhani authorities claimed that the visits were canceled because those areas were under emergency rule. However, judging by first-hand accounts of abusive treatment committed against Armenians in these areas, both the Azerbaidzhanis and the central authorities had reason to deny Helsinki Watch access to these centers.

Helsinki Watch interviewed an Armenian who was beaten severely and subjected to other mistreatment in an Azerbaidzhani detention center. Amnesty International reported that two Armenians died after physical abuse in these centers.

Similar allegations of physical abuse in cases with political implications have emerged in Georgia. In the Fall of 1991, there were two prison revolts in Georgia to protest the guards' brutality and poor conditions. Two prisoners were killed by Soviet MVD troops brought in to put down the revolt.

Death Penalty

The July 1991 Soviet Fundamentals of Criminal Legislation reduced to five the number of crimes punishable by the death penalty: treason, premeditated murder under aggravated circumstances, rape of a minor with aggravated circumstances, kidnapping a child, and crimes against humanity. The fundamentals exempt women and anyone under the age of eighteen from capital punishment. In the post-coup Soviet Union, however, republics may or may not continue to abide by these guidelines.

In 1991, the Soviet Justice Ministry published, for the first time since 1934, statistics on executions in the Soviet Union. The number of death sentences carried out in the USSR decreased from 770 (with twenty commutations) in 1985, to a low of 271, (with seventy-two commutations) in 1988. In 1989, there were 276 sentences and twenty-three commutations and in 1990, 445 sentences with twenty-nine commutations. A reported 195 executions were actually carried out in

1990.

Condemned prisoners may petition for clemency to the Soviet Clemency Commission, the presidium of the republic Supreme Soviet where the sentence was issued, and the Soviet president. Under the old political system, the Soviet president had ultimate authority to decide on clemency.

Judicial System

Under the Soviet system which held sway in the country for over six decades, the citizen was treated as the creature of the state. The judicial system, such as it was, was usually meant to follow previously determined decisions on the guilt — or, rarely, the innocence — of the accused.

Judges were all party members, and People's Assessors — meant to introduce the pseudo-voice of the populace — were also party loyalists. In short, the new judicial systems in the republics will have to overcome decades of popular suspicion, party dependence, and general incompetence.

Reform of the judicial system was a major priority of Soviet reformers, as well as Western legal experts who offered much assistance in this important effort. After the Soviet central government collapsed in December, however, the future of many reforms — however imperfect — of the Soviet judicial system is uncertain. The various republics of the former USSR are likely to have widely differing policies, let alone practices, in this key area.

A review of previous Soviet reforms indicates the likely difficulties which former Soviet citizens will face under new diverse judicial systems:

- o Amendments to the Fundamentals of Criminal Procedure for the first time codified the presumption of innocence of the accused and proclaimed the defendant's right to legal counsel from the moment that criminal charges are brought or within 24 hours of arrest or detention. Further amendments grant defense counsel free access to their clients and to the investigative file of the case. In practice, however, access was still controlled — and sometimes denied — by the investigator or the militia.
- o Practical difficulties in the implementation of these new theoretical rights abounded in the area of pretrial defendant rights; even a day could be too long to give the militia unimpeded access to a

defendant. The law does not say that the accused has the right to remain silent during this time. In addition, defendants were not apprised of their right to counsel and were often denied access to counsel until later in the criminal process. Furthermore, the acute shortage of lawyers, particularly defense lawyers, prevented the implementation of these rights.

Political Prisoners

Although the number of political prisoners has declined sharply in recent years, the issue unfortunately has not disappeared. According to veteran human rights activist Cronid Lubarsky, who publishes a respected newsletter on this issue, as of October 31 there were—depending on the definition of the term—157 political prisoners in the former USSR. Of these, 78 may have used violence, and, under a definition that limits the term to those punished for peaceable expression or association, may not be appropriately labelled political prisoners.

A republic breakdown of these statistics reveals the following:

Russian Republic: 23 (including 12 who may have been violent)
Belorussia Republic: 2 (including 1 who may have been violent)
Georgian Republic: 70 (including 16 who may have been violent)
Armenian Republic: 1 (including 1 who may have been violent)
Azerbaijani Republic: 49 (including 46 who may have been violent)
Kazakhstan Republic: 4 (including 1 who may have been violent)
Uzbekistan Republic: 4 (including 1 who may have been violent)
Tadzhikistan Republic: 2
Turkmenian Republic: 1
Kirghizian Republic: 0
Moldavian Republic: 0
Baltic States: 0

Positive steps have been taken in the USSR toward releasing political prisoners and addressing past abuses against them. The RSFSR Supreme Soviet in late October declared October 30 as an official day of commemoration for victims of political oppression. The date has special significance because, during the Brezhnev era, imprisoned dissidents marked it as the Day of the Political Prisoner. In addition, an October 18 RSFSR law rehabilitates those who suffered political repression

throughout the Soviet period and provides financial compensation for some categories of victims.

Some great major strides have been made in the releases of political prisoners. In 1991, political prisoners were amnestied within weeks after the coup in several republics, including Russia, Ukraine and Tadzhikistan. In Russia, the Supreme Soviet's Committee on Human Rights requested that Russian President Yeltsin pardon five political prisoners and Kirgiz President Askar Akaev pardon one; all the prisoners were serving sentences for attempting to emigrate illegally or engage in espionage; such emigration attempts came under a criminal code provision on treason. Among them was Valery Yanin, who had been charged by a Kirgiz court with attempting to emigrate illegally to Turkey and had served three years in a psychiatric hospital and twelve years in prison. Yanin was released from Perm Prison Camp 35 on September 14. On September 27 Anatoly Khobta, Aleksandr Goldovich, Viktor Olisnevich, Valery Smirnov and Aleksey Scherbakov were released from the same camp.

Shortly after Ukraine declared independence on August 24, its National Council introduced "a list of legislation in reaction to the coup."²⁵ The list included the depoliticization of the Ukrainian Procuracy, as well as the republic-level MVD and militia. There was also a call for the immediate release of People's Deputy Stepan Khmara, who had been imprisoned and released three times in the previous year for his political activity. Ukrainian President Kravchuk also declared a general amnesty on August 26, according to Soviet news agency Interfax, for all "political prisoners against whom proceedings were brought during the period of political confrontations by separate militant groups."²⁶ Kravchuk was referring to the sharp ideological clashes between pro- and anti-Communist groups in Ukraine which had prevailed there several years ago.

On September 10, a general amnesty was declared in Tadzhikistan, cutting by half the sentences of men over age fifty-five, World War II veterans, women over age fifty, and women with minor children. Those sentenced for alleged participation in the violent February 1990 events

²⁵ *The Ukrainian Weekly*, September 1, 1991.

²⁶ Interfax News Service, August 26, 1991, as reported in FBIS, August 27, 1991.

are included in this amnesty.

However, of growing concern are those detainees who may be charged with violent political crimes simply because of their political affiliations. In Georgia, almost seventy members of opposition paramilitary groups have been arrested solely because of their membership in these groups, without apparent regard to whether they have committed violent acts. The Georgian government classifies them as common criminals because of the violence sometimes employed by these opposition groups. Helsinki Watch also remains concerned about the treatment of detainees in Azerbaidzhani prisons, as noted above.

Helsinki Watch has learned of several prisoners in Georgia and Central Asia who appear to have been imprisoned in 1991 for the peaceful expression of their views:

- o Turkmenistan Popular Front leader Shiraly Nurmyradov was sentenced in July to eighteen months in prison on charges of fraud. He and his supporters claim that the charges are fabricated, and that statements written by the alleged victims denying that the fraud ever occurred were ignored by the Turkmenian Supreme Court.
- o Uzbekistan People's Deputy Shovruk Ruzimurodov was sentenced in July to four years imprisonment for "organizing mass disorders." Because he was not present at the meeting of the Uzbekistan Supreme Soviet at which he was stripped of his parliamentary immunity, the parliamentary action was illegal. Ruzimurodov was an activist in *Birlik*, a nationalist group that calls for Uzbekistan sovereignty and acts as the Uzbekistan Popular Front.
- o Georgian National Democratic Party leader Gia Chanturia was arrested after a plane in which he was flying was ordered to return to Tbilisi on the evening of September 17. He was charged with having organized construction of barricades on Rustaveli Prospekt on September 2, which his supporters deny he did.
- o Georgian journalist Giorgi Khaindrava, a close associate of Chanturia, was arrested by plainclothesmen on a street in Tbilisi on September 18. Local opposition activists claim he was arrested for making videotaped documentaries of the violent events of September 2.

- o South Ossetian Popular Front leader Torez Kulumbegov was arrested on January 29 and charged with inciting ethnic hatred. His trial was scheduled to begin in September and has been postponed several times.

The fragmentation of power in the USSR has made it difficult to identify which agencies are authorized to arrest and release individuals, to obtain verifiable material on individual cases, and to track political prisoners. Evidence of such fragmentation was seen in a Moscow Central TV interview broadcast on September 13, in which new KGB Chairman Vladimir Bakatin stated, "[The issue of political prisoners] is a question not for the KGB but for the Ministry of the Interior, because it is the MVD which deals with all of these gulags....Therefore, all these lists are there."²⁷ The problem is compounded by the proliferation of paramilitary groups and subsequent mass arrests in certain republics.

Conscientious Objectors

The legal right to claim conscientious objection to military service is still not recognized in the Soviet Union. Compulsory military service of at least two years was, until recently, required by law. With many republics declaring independence, it seems likely that the problem of conscientious objection to Soviet military service will diminish. Some republics, notably Ukraine, have set up their own military systems or national guards. Kazakhstan and Moldova have also taken steps toward the creation of military service for their respective republics. If service is made compulsory for these citizens, the issue of conscientious objection could re-emerge.

According to Amnesty International, there were at least thirteen imprisoned conscientious objectors in the Soviet Union as of July. By October, however, Cronid Lubarsky reported that there were three men remaining in prison on these charges. In February, the USSR Supreme Soviet considered a draft law proposing an alternative to military service for conscientious objectors. It is to be hoped that the republics will adopt legislation providing for conscientious objection or alternative service to military service.

²⁷ Moscow Central Television, as reported in FBIS, September 16, 1991.

In another legislative development, the USSR Supreme Soviet adopted on November 1 a law granting amnesty to military deserters and draft dodgers. Under the law, these groups would receive amnesty if they either return to duty or present themselves to the police within one month of the law's entry into force.

Psychiatric Abuse

No new cases of political abuse of psychiatry were reported in 1991. Still, much remains to be done before psychiatric practice in the Soviet Union meets acceptable international standards. The All-Union Society of Psychiatrists and Narcologists was actively involved in drafting legislation, described below, to protect the rights of the mentally ill. However, the Society has not publicly acknowledged past psychiatric abuses, penalized past abusers, or taken any steps to relieve those who suffered from abuse or misdiagnosis.

The Society established a commission to review cases of possible psychiatric misdiagnosis — usually involving overdiagnoses of schizophrenia — but it reportedly is not very active. Since mid-1990, it has reviewed 112 cases, and has a waiting list of an additional four hundred people. Even when the commission finds cases of abuse and misdiagnosis, the Society is apparently not helping victims seek legal and social rehabilitation. Rather, the society sets the historical and personal records of former victims straight.

The World Psychiatric Association reported that there is still no effective review of psychiatric treatment and administration in the USSR. Although individual psychiatrists have shown greater sensitivity to their patients' legal rights, patients in general are poorly informed about these rights. Soviet draft legislation on mental health issues, introduced in parliament in June, would establish that the mentally ill have full rights as citizens, provide for confidentiality, and call for lawyers and psychiatrists to protect patients' rights. It is to be hoped that such laws will be enacted.

The Right to Monitor

The conditions for human rights monitoring in the Soviet Union have improved dramatically over the past few years. It is up to the constituent republics and emerging states of the USSR to maintain these

improvements, since they now exercise control over many of the institutions — such as the prisons, the interior ministries and the riot police — that may impose restrictions on human rights monitoring.

In 1991, the Soviet government did not systematically inhibit the formation of domestic human rights monitoring organizations, or investigations by domestic or international monitoring groups. Domestic monitors generally had access to prisons, many officials at a variety of levels, official records, and usually to areas under states of emergency. Soviet officials also permitted other human rights monitoring work. During the 1991 meeting in Moscow of the Conference on Security and Cooperation in Europe (CSCE), Helsinki Watch held independent proceedings on human rights abuses in the Soviet Union, bringing in experts and witnesses from around the country. The Moscow Helsinki Group held a similar forum in Vilnius. In addition, Helsinki Watch opened an office in Moscow in September to facilitate its monitoring in the country. These developments would have been unthinkable in the Soviet Union of even two years ago.

Some exceptions mar this positive trend. In late December 1990, the Soviet military procurator denied information to the Azerbaidzhani Supreme Soviet commission appointed to investigate the January 1990 crackdown in Baku. For example, it refused to furnish data on military casualties during the crackdown, claiming that such information was available in the "central press."²⁸ Soviet authorities, along with their Azerbaidzhani counterparts, refused to grant Helsinki Watch access to two prisons where Armenians were being detained, as described above, and generally refused to allow individual interviews with prisoners.

More generally, human rights monitoring by international groups is hindered by the exacting bureaucratic procedure required for obtaining business visas to visit the country. One of the purposes for opening a Helsinki Watch office in Moscow is to try to reduce these bureaucratic entanglements, but to do so the office must be registered as a foreign organization on RSFSR and USSR territory. It is unfortunate that, despite its professed commitment to human rights, the government of the Russia Republic has thus far refused to register Helsinki Watch, claiming that it does not have the proper procedure to do so.

²⁸ The list published in the press was unofficial and differed considerably from the one held by the military procurator.

Human rights monitoring in other republics of the USSR can be problematic. A member of Memorial, a Soviet human rights group, was declared *persona non grata* in Georgia for his critical remarks about human rights conditions in that republic. Members of the Russian Republic's parliamentary commission on human rights were reportedly detained briefly in an Azerbaidzhani prison during their investigation of deportations of Armenians from Azerbaidzhan.

U.S. Policy

As the Cold War waned and the Soviet Union began to crumble, the U.S. government's concern with human rights problems in the USSR diminished. The Bush Administration continued some important human rights programs, especially in promoting free emigration and the development of the rule of law, but in general it accorded human rights issues low priority in what was mainly a reactive policy toward the USSR. The Administration's commitment to President Gorbachev sometimes led it to downplay its criticism of human rights abuses because it was afraid of undermining Gorbachev's hold on power. Its focus on Gorbachev and the central government began to change after the August 1991 coup attempt that speeded up the disintegration of the Soviet Union and the empowerment of republic governments. In December, Secretary Baker set forth key human rights concerns as the basis for new relationships between the United States and the former Soviet republics.

In 1991, the State Department as a whole, its Bureau on Human Rights and Humanitarian Affairs, the U.S. Embassy, and the U.S. Helsinki Commission continued some already established valuable human rights programs in the USSR. The U.S. Embassy in Moscow actively promoted Jewish emigration by providing extensive resources and staff support to refugees. This support included not only processing refugee immigration forms, but also arranging for U.S. grants for individuals who had to pay for their airline tickets in hard currency.

According to U.S. government sources, the Embassy also negotiated with the Soviet government to obtain promises that the 1991 emigration law would be implemented so that emigres would benefit fully from it. The Soviets agreed to give international passports automatically to individuals who had exit visas to Israel when the law was adopted, rather than force them to go through the long bureaucratic procedure for

obtaining passports.²⁹ Soviet officials also reportedly guaranteed that the maximum five-year waiting period for those who were exposed to state secrets would begin with the date of exposure, rather than the date the law was adopted. In October, the State Department began to investigate reports that republic emigration officials were not abiding by the USSR emigration law.

By bilateral agreement with the Soviet government, the U.S. government has access to documents on those Soviet criminal cases that it suspects may have political overtones. In 1991, the U.S. Embassy obtained documents on and investigated roughly thirty such cases. In addition to these activities, the human rights officer in Moscow meets weekly with the head of the Human Rights and Humanitarian Affairs Bureau of the Russian Republic Foreign Ministry.

The State Department Bureau of Human Rights and Humanitarian Affairs organized programs to encourage the rule of law in the Soviet Union. Two seminars brought together Soviet and American judges in Moscow. The U.S. Information Agency sponsored a one-month training program in the United States for Soviet legal experts. Richard Schifter, the assistant secretary of state for human rights and humanitarian affairs, made two trips to Moscow, where he met with Soviet officials from the Ministry of Foreign Affairs, the Ministry of Justice, and the Office of the Procurator General. In these and other meetings, Secretary Schifter discussed human rights issues and legislation. His office has concentrated its activities on helping the Soviets to create institutions that can be used by Soviet citizens to protect their individual rights.

After the coup attempt, Secretary Schifter met with Vadim Bakatin, the new KGB chair, to discuss the right to privacy and the limits of police power in a democratic state. Schifter also voiced concern over due process for the coup plotters in his discussion with the Soviet Deputy Procurator General.

In September, a delegation of the U.S. CSCE Commission visited Estonia, Latvia and Lithuania, as well as the republics of Georgia and Armenia. Human rights issues received particular attention in meetings with Georgian, Lithuanian and Armenian officials. In Moscow, the group met with Sergei Kovalev, chair of the Human Rights Commission of the

²⁹ Previously, Soviet emigres to Israel were not given Soviet passports for international travel. If they already had such passports, they were required to surrender them.

Russian Republic Supreme Soviet, and discussed human rights issues with Russian Foreign Minister Andrei Kozyrev.

At the CSCE Conference in Moscow, Max Kampelman, Chair of the U.S. delegation, delivered a statement expressing "profound concern" over the arrests of Georgian National Democratic Party leaders, deploring the violence in Southern Ossetia, and urging President Gamsakhurdia to restore basic civic freedoms in Georgia and to bring his behavior in line with CSCE requirements. Kampelman's criticism of human rights violations in Uzbekistan and the deportations from Azerbaidzhan showed an understanding of the human rights impact of the disintegration of the Soviet Union, and the consequences for human rights of its very complex ethnic structure.

The Concluding Document of the Moscow CSCE Conference provides for a new system of expert fact-finding missions under which a participating state may invite, or may be asked to invite, delegations of experts, composed of people who are not nationals or residents, to investigate human rights questions in its territory. The United States government fully supported this measure. However, it did not support a Soviet-sponsored proposal that would have given the missions the authority to recommend sanctions in cases in which abuses were found.

Despite these positive moves on some human rights issues, the Administration's reaction to human rights abuses in the USSR throughout 1991 was hampered by its Moscow-centrism and its fear that raising human rights issues might undermine President Gorbachev and interfere with good U.S.-Soviet relations. At critical moments, the Administration disassociated Gorbachev from disturbing human rights developments and declined to call upon him directly to account for human rights abuses.

The clearest and most important example of this tendency was the Administration's very cautious response to the violent crackdown in Lithuania and Latvia by Soviet armed forces, which left at least twenty-two civilians dead and hundreds wounded. President Bush, the State Department and other Administration officials and spokespersons did come forth with harsh public criticism of the Soviet Union, but the Administration took no further measures. Moreover, the criticism came four days late, seemed targeted mainly for domestic consumption, and pointedly avoided assessing Gorbachev's role in the crackdown or calling upon Gorbachev directly to intervene. Calls from the U.S. Congress and the Baltic-American community to postpone the forthcoming summit meeting were initially disregarded and, when the summit ultimately *was* postponed, the crackdown in the Baltics was not among the reasons

given.

President Bush initiated the Administration's mild reaction in his remarks on January 13, in which he "ask[ed] the Soviet leaders to refrain from further acts that might lead to violence" and urged the Soviet government to resolve its conflict with Lithuania through political channels. It was only in response to public and congressional pressure that the Administration ultimately condemned the use of force and raised the issue with CSCE member states. Addressing the U.S. CSCE Commission on January 17, Assistant Secretary of State for European and Canadian Affairs Raymond Seitz condemned in strong terms the violence in Lithuania and declared that the United States held "the Soviet leadership responsible for the actions of the Soviet military." He emphasized that the military actions violated Soviet commitments under the Helsinki Accords and pointed out the need for the United States and its allies to present a "unified front" to the Soviets.

Secretary Seitz also threatened that "the whole range of programs of cooperation" with the Soviet Union would be curtailed if the repression did not stop, but did not say what specific measures the United States would take in response to the military crackdown. Indeed, from the initial troop deployments through the aftermath of the violence in Lithuania and Latvia, the Administration dithered. President Bush glossed over the issue in his January 13 statement, saying only that the Soviet actions "could not but affect our relationship." He specifically refused to address the question of whether plans for the U.S.-Soviet summit, scheduled for February, would be affected. A few days later State Department spokesman Richard Boucher condemned the violence but indicated that punitive actions were not a priority: "we have in mind the U.S.-Soviet relationship." Secretary Baker observed on January 22 that the use of force might jeopardize "progress" in U.S.-Soviet relations and declined to elaborate.

The Administration turned down an opportunity to explain its policy toward the Soviet Union in light of the crackdown. On January 23, the House Subcommittees on Europe and the Middle East and on Human Rights and International Organizations held a joint hearing on the Baltic developments. American and Baltic-American academic experts on the Soviet Union testified. The State Department was asked to testify, but replied that it could not attend, even though every effort was made to accommodate its schedule.

After the January events, the Administration was still reluctant to publicly criticize the Gorbachev government for human rights abuses. For

example, when Gorbachev attempted to suspend press freedoms after the crackdown, the State Department viewed it merely as "a step in the wrong direction." When he sought in March to ban all demonstrations in Moscow and impose direct rule over the city, the State Department publicly declared it an "internal matter." Later, in March, however, Administration sources told Helsinki Watch it publicly and privately cautioned Soviet authorities not to use force against demonstrators.

U.S. support for Moscow throughout most of 1991 suggested that concern with the viability of the central government outweighed an interest in human rights in the emerging new political arrangements. President Bush's loyalty to Gorbachev resulted in contradictory statements.

Responding to MVD central government-controlled OMON attacks on a Lithuanian-Belorussian customs post at Medininkai on July 31—which resulted in the killing of seven Lithuanian officials, and the critical wounding of another—the State Department used general language to urge the Soviet government to settle its claims with Lithuania peacefully. President Bush, in Moscow at the time of the incident, implied it was the result of "cross-border violence on both sides," further minimizing the Soviet government role.

Appearing at a Moscow press conference with Gorbachev a few hours after the Medininkai incident, President Bush denied any link between the killings and the Baltic drive for independence. Asked for his reaction "to the incident in light of your call yesterday afternoon for freedom for the Baltic states, the President replied, "Well, I don't think there is a connection." Bush went on to appear to try to shield Gorbachev from any responsibility for the Medininkai incident, saying, "The President [Gorbachev] immediately got on this [the murders] and said they are conducting an investigation."

On August 13, however, President Bush sent a letter to Lithuanian Prime Minister Gediminas Vagnorius. Bush wrote:

A situation has been created in the Baltic states that itself leads to violence, and that situation must be changed. We will continue to press the Soviet government to exercise control over the actions of its forces in the Baltic states and to make clear our belief that Moscow is ultimately responsible for acts committed by its personnel.

There are two possible explanations for the President's contradictory reactions to this incident. Either the Administration did not want to voice

public criticism of the Soviet central government—or of Gorbachev—for the Medininkai killings, or Bush was later privy to new information indicating responsibility.

The Bush Administration is to be credited for its tough response to the August 19 coup attempt. It refused to deal with the Emergency Committee, which President Bush compared to the "renegade regimes" in Iraq and Libya.

Despite its Moscow-centrism, the United States did make a concerted effort in 1991 to expand contacts with democratic reformers and in the RSFSR and the non-Russian republics. An impressive list of U.S. government official activities includes nearly thirty meetings involving republic leaders and reform groups from ten republics. The State Department reports that human rights concerns figured prominently in meetings with delegations from Georgia and Azerbaidzhan. However, official public comments on the continuing violence in Georgia and Azerbaidzhan have been mild and infrequent.

The development of official contacts in the republics represents a significant change from 1990. Even so, for most of the year the Administration underestimated the seriousness of the internal struggles in the USSR and its implications for human rights. For example, Secretary of State James Baker's rosy assessment of *perestroika* in June before the Senate Appropriations Subcommittee ignored the ongoing struggle for power between the central government and the republics as illustrated by the failed union treaty negotiations. It was not until just before the December 1 Ukrainian independence referendum that the U.S. government, in announcing that it would recognize Ukrainian independence, indicated that it was abandoning its Gorbachev-centered approach.

Marking a major new stage in U.S. policy toward the former Soviet Union, Secretary Baker announced on December 12 the U.S. intention to coordinate aid initiatives through direct contacts with the new republics. Declaring that the "dramatic end of communism in Moscow and the unraveling of the centralized Soviet state" present the West with great opportunities as well as dangers, Baker said that republic leaders now look to America for assistance, including in democratization: "We must help our former adversaries understand the ways of democracy and to build political legitimacy out of the wreckage of totalitarianism." Baker said:

The West...should stick to fundamentals and support those, wherever they may be found, who put into practice our principles and values....Unless republic governments respond by complementing their independence with democracy and the equal treatment of persons belonging to minorities, they will soon find themselves suffering the very same crises of legitimacy, cohesion and effectiveness that has caused the centrifugal devolution of power in the Soviet Union itself.

Baker also outlined several key human rights components of the new relationship between the United States and the republics of the former USSR:

[T]he United States will welcome into the community of democratic nations those new political entities who believe in democratic values and follow democratic practices; who respect borders and commit changes only through peaceful and consensual means; and who will adhere to the international obligations and norms and practices of the Helsinki Final Act and the Charter of Paris.

In his December 12 speech, Baker summarized past and future aid initiatives now organized on a republic-to-republic basis. He began by listing current U.S. food and medical supply programs to various republics and areas in the former USSR:

- o The United States has shipped 10 million tons of food in 1991.
- o The United States has granted four billion dollars in Commodity Credit Corporation food and grant credits this year, \$2.3 billion of this amount since the coup.
- o Project Hope has sent nearly 20 million dollars in privately-funded medical supplies; in the next 18 months that amount will likely double. These supplies have been sent to the "most needy" areas: in the Urals, around the Aral Sea, near Chernobyl, in Armenia, and Moscow; Belorussia will also soon receive medical supplies.
- o A separate post-independence program has been created for the Baltic states; they have already received 8 million dollars in medical

supplies.

- o The Department of Agriculture has been ordered to expend or deliver 165 million dollars of its grant funds to meet food shortages.
- o The U.S. government will use 100 million dollars of the amount which Congress has authorized in order to transport humanitarian assistance.
- o The U.S. government will expend food stocks left over from Desert Storm to assist hard hit areas: Armenia, the industrial cities of the Urals, and Moscow and St. Petersburg.

Baker proclaimed, "[T]he best way the West can help is to place Western experts on the ground and to bring Russians, Ukrainians and Kazakhs and others here for training." He described various people-to-people programs to assist in personnel training:

- o The president has already approved an effort to put Americans on the ground to solve long-term food distribution problems.
- o The Administration is proposing several steps to augment ongoing USIA efforts.
- o The Administration will work with Congress to support an expanded Peace Corps program in at least four republics.
- o The U.S. government will expand a Commerce Business Training Program to accommodate 150 Soviet interns in the next year.

In this speech, Baker also announced initiatives to increase technical assistance and funding:

- o The Administration intends to propose authorizing legislation to Congress to ease U.S. efforts to provide assistance and technical cooperation. A major aim of this legislation will be to promote trade, business and investments by U.S. corporations in various areas of the former USSR.
- o For 1992, the Administration with Congress will put forth a 100

million dollar technical assistance program. One aim of this program is to act as a catalyst for private investment.

- o President Bush will ask the heads of the Trade and Development Program, the Overseas Private Investment Corporation and the Export-Import Bank to consider facilitating the work of U.S. businesses in food distribution, energy and housing.
- o The Administration supports accelerated IMF and World Bank efforts to draw up new economic plans for those republics which follow security and political responsibilities which the U.S. has put forth.

Baker's enumeration of U.S. programs to assist the republics of the former USSR reveals a new emphasis. Baker declared, "[T]he bulk of responsibility must lie with republic leaders who have already assumed primary control over economic policy and resources. They must make the hard choices necessary for economic recovery."

The Administration now recognized that it must deal with the republic leaders as the primary sources of power. And Secretary Baker has indicated that U.S. support will go to those republics that believe in democratic values and follow democratic practices."

The Work of Helsinki Watch

In 1991, Helsinki Watch intensified its work in individual Soviet republics while maintaining its ongoing monitoring of human rights throughout the territory. The recognition of the independence of the three Baltic states and the devolution of power to the remaining republic governments has underlined the need for Helsinki Watch to continue its program, begun in 1990, of human rights monitoring in each of the regions that once made up the USSR and to expand its efforts to examine violations by republic governments. During the course of 1991, Helsinki Watch representatives traveled to Armenia, Azerbaidzhan, Estonia, Georgia, Latvia, Lithuania, Moldavia, Russia, Tadzhikistan and Turkmenistan, and published reports on various "hot spots" in the Soviet Union. The opening of an office in Moscow at the end of 1991 will facilitate Helsinki Watch's work of monitoring both the central and the republic governments.

In the aftermath of the January events in Latvia and Lithuania, Helsinki Watch issued a newsletter, "Pattern of Violence: Lithuania is Latest Example of Soviet Army's Use of Lethal Force," which condemned the Soviet army's use of force. Helsinki Watch pointed out that the Baltic violence was consistent with a pattern of violence in five other republics during Gorbachev's presidency. An article on this subject, authored by Helsinki Watch, appeared in *The New York Times* on January 16, 1991. At the end of January, Helsinki Watch representatives traveled to Estonia, Latvia and Lithuania to talk with government officials and eyewitnesses to the January events; the findings of the mission appeared in an article in *The New York Review of Books*. The central government's reluctance to investigate the January events prompted a March 11 letter from Helsinki Watch, expressing concern about official subversion of such efforts. Soviet military attacks on civilians and buildings in the Baltic republics were updated in a June 19 newsletter, "USSR: Continuing Violence in the Baltics," and a border-post incident that caused seven deaths was condemned by Helsinki Watch in a press release on August 6.

Helsinki Watch also investigated violence against civilians by central Soviet government forces during a January 1990 military incursion in Baku, Azerbaidzhan. On January 19, 1991 — a year after the disturbances, in which 131 civilians were killed by the Soviet army — Helsinki Watch issued an appeal to the Soviet and Azerbaidzhani governments to cooperate fully in investigating the event and to lift the state of emergency. An extensive report, *Conflict in the Soviet Union: Black January in Azerbaidzhan*, issued in May 1991, published the results of Helsinki Watch's fact-finding missions to Azerbaidzhan.

Another report in the Helsinki Watch series on the Soviet army's unwarranted use of force against civilians was published in August 1991. It dealt with the February 1990 incidents in Tadzhikistan in which twenty-one unarmed protestors were killed by Soviet armed forces. *Conflict in the Soviet Union: Tadzhikistan* called upon Soviet authorities to try those criminally liable for the use of lethal force and denounced the use of the military for police actions. The lengthy report was the product of several Helsinki Watch fact-finding missions to Tadzhikistan in 1990 and 1991.

Human rights issues have emerged starkly in the conflict between Armenia and Azerbaidzhan for control over the fate of the Nagorno-Karabakh territory. On May 10, 1991, Helsinki Watch appealed to the Soviet government to take steps to end the conflict and to ensure the safety of civilians in Nagorno-Karabakh and along the border between

Azerbaidzhan and Armenia. In June and July, Helsinki Watch representatives traveled to Armenia and Azerbaidzhan to investigate the displacement of populations from both republics. In a letter sent before President Bush's early August trip to Moscow, Helsinki Watch urged President Bush to raise the issue of the Soviet government's reliance on lethal force against civilian protestors in Kazakhstan, Georgia, Uzbekistan, Azerbaidzhan, Tadzhikistan, Lithuania, Latvia and Armenia.

Helsinki Watch publicly condemned key aspects of the August coup: the takeover of the Soviet government, the suspension of civil liberties and the shutdown of the independent media. Helsinki Watch also pointed out that the failure to condemn the misuse of military force in the past may have led the coup plotters to believe that they could assume power with impunity.

Helsinki Watch also continued its monitoring of a variety of other human rights abuses in the USSR. In April 1991, Helsinki Watch issued *Glasnost in Jeopardy: Human Rights in the Soviet Union*, an overview of the human rights situation in the Soviet Union through March 1991. The report noted the Gorbachev government's move toward the right in the fall of 1990, and pointed out that the renewed repression had not been successful in suppressing liberties that had come to be exercised during the previous three years. It included sections on the rights of members of ethnic minorities, and discussed the movement of the republics toward secession, the draft union treaty and the status of governmental and military structures. Texts of the major laws enacted in 1990 appeared in the appendix.

Helsinki Watch continued to express concern about people imprisoned for political reasons. On June 10, 1991, Helsinki Watch sent a telegram to Zviad Gamsakhurdia, the president of Georgia, and to Vakhtang Razmadze, the procurator general, expressing concern about the physical condition of Dzwaba Ioseliani, an opposition political figure who was in prison and on a hunger strike. On June 22, Helsinki Watch sent a cable to Turkmenia's President Niyazov to protest the pending trial of Turkmenian Popular Front activist and writer Shiraly Nurmuradov. On July 8, Helsinki Watch called on the Soviet government to ensure fair treatment of Fark Ismail and Nadir Agaev, who had been released from years of unjust detention in psychiatric hospitals and continued to experience harassment from the Soviet government. Helsinki Watch also expressed concern about the political overtones in the case of Stepan Khmara, a peoples' deputy from Ukraine and a leading proponent of independence, who was arrested on charges of assaulting a policeman.

Helsinki Watch has also noted violations of civil and political rights in Georgia and Russia in the post-coup period. In another letter to President Gamsakhurdia dated September 27, 1991, Helsinki Watch expressed alarm at reports that the Georgian government was censoring the press, harassing political opponents, and using excessive violence in the conflict with the South Ossetians.

At the time of the August 19 coup, Helsinki Watch urged the cancellation of the major CSCE human rights conference scheduled to take place in September in Moscow. When the coup failed, the CSCE Conference on the Human Dimension took place as planned. Helsinki Watch sent a large delegation to the conference and organized three independent seminars. The first dealt with recent incidents of the unjustified use of force by the Soviet government against civilians in eight republics and consisted of oral reports by eyewitnesses and officials. The second focused on the current plight of ethnic minorities deported under Stalin; the discussion, which included Russian parliamentarians and representatives of various deported peoples, centered on a new Russian Republic law on compensation for the deported peoples. A report by Helsinki Watch, *Punished Peoples of the Soviet Union: The Continuing Legacy of Stalin's Deportations*, was released in Moscow at the seminar. A third Helsinki Watch event in Moscow was a roundtable discussion on prison conditions in various CSCE countries, including the USSR. Helsinki Watch used the occasion to release a preliminary version of its report, *Prison Conditions in the USSR*. Based on visits by Helsinki Watch to twenty-one facilities in Russia and Azerbaidzhan, the report maintains that, despite efforts by prison authorities to eliminate systemic abuse, grave problems remain, especially in pretrial prisons.

Helsinki Watch offices in New York and Washington continued to provide a forum for visiting Soviet journalists and activists and republic government officials. Among those hosted in 1991 were Lev Timofeyev, a member of the Moscow Helsinki Group; Revaz Mkheidze, a Georgian television journalist; Judge Bakradze of the Tbilisi City Court; Judge Zemribo, chief justice of the Latvian Supreme Court; Gogik Haratiunian, vice president of Armenia; Antanas Buracas, head of the Lithuanian Human Rights Committee; Alexejs Grigorieff, a journalist and member of the Latvian Human Rights Commission; Tamerlan Karaev, vice president of Azerbaidzhan; Yuri Butchenko, a Siberian labor activist; Zenon Poznyak, head of the Belorussian Popular Front; and Andrei Kozyrev, Russian Republic Foreign Minister.

TURKEY

Human Rights Developments

Respect for human rights deteriorated markedly in Turkey in 1991. In comparison with 1990, more people died in detention under suspicious circumstances, and more people were shot and killed by security forces in raids on houses, attacks on demonstrations and other suspicious circumstances. Torture continued to be rampant. Writers were detained and prosecuted. Journals were banned and confiscated. And the freedoms of assembly and association were frequently infringed.

Turkey's Kurdish minority, in particular, continued to suffer. As the Turkish government launched attacks on the Kurdish Workers' Party (PKK) — a militant separatist organization which has been waging a guerrilla war against the Turkish government since 1984 — villagers were detained, arrested, tortured and sometimes killed by official security forces. In addition, hundreds of civilians were forced to abandon their villages because they refused to provide armed village guards as directed by the security forces.

On the positive side, thousands of political prisoners were released from prison, some of whom had been in prison for as long as ten years. The Turkish Grand National Assembly repealed several onerous provisions of the Penal Code, but unfortunately replaced them with an equally onerous Anti-Terror Law.

Torture continues to be used routinely in Turkey, largely in the political sections of police headquarters during the investigative phase of a case. During 1991, Helsinki Watch received regular allegations of torture in detention, including beatings; spraying naked and blindfolded prisoners with highly pressurized cold water; suspending prisoners by their wrists or arms; applying electric shocks; rape and attempted rape; forcing a truncheon into the vagina or anus; squeezing genitals; *falaka* (beating on the soles of the feet); sleep deprivation; denial of food or water; dragging prisoners along the ground; placing prisoners in a tire and beating them; forcing prisoners to sleep on a wet floor; forcing prisoners to listen to others being tortured; spitting in prisoners' mouths; denying permission to use the toilet; and pulling or burning hair.

Torture is practiced on children as well as adults. Helsinki Watch has received credible reports of children between the ages of eleven and

seventeen who were detained by police and beaten in custody for such offenses as writing political slogans on walls, taking part in demonstrations, or belonging to illegal organizations.

Although then-Prime Minister Turgut Ozal issued a decree in September 1989 requiring that detainees have immediate access to attorneys, access is almost never granted. Prompt access to an attorney and family members could be an important step toward ending the practice of torture during police investigations.

In some recent cases, torture appears to have resulted in death. Helsinki Watch received reports of deaths in detention under suspicious circumstances of fifteen people in 1991. In three of these cases, Turkish authorities alleged that the prisoners had killed themselves.

In six of the fifteen cases, authorities reported that the deaths were under investigation. In a seventh case, two security-force members are on trial for killing a detainee. Helsinki Watch has received no reports of prosecutions of police, gendarmes or soldiers. Torturers and others responsible for deaths in detention are rarely investigated and tried and almost never convicted. Abdulkadir Aksu, the former minister of the interior, reported that in the past ten years only thirty of 382 security officers tried on charges of inflicting torture were convicted. Many of those convicted were sentenced to no more than a fine. Major Cafer Tayyar Caglayan, for example, who was convicted of forcing residents of Yesilyurt village in Cizre, Mardin, to eat human excrement, was initially sentenced to one year in prison, but on July 18, 1991, his sentence was commuted to a fine and then suspended.

During 1991, Helsinki Watch received reports of forty-five fatal shootings by police or gendarmes in raids on houses, attacks on demonstrations, and other suspicious circumstances. In some cases, government authorities characterized these incidents as shoot-outs between security forces and terrorists, or as responses to provocation on the part of demonstrators or others.

Nineteen of the forty-five fatalities were people who were killed in raids on houses in Istanbul, Izmir and Ankara. In each case, police alleged that the houses were used by militant left-wing groups. Police accounts in most of these cases conflicted with those of eyewitnesses as to whether the police had been fired upon. However, no police were reported killed in any of these raids, which strongly suggests that the killings were summary executions.

In addition, ten people, including children aged eleven and thirteen, were killed by police using live ammunition as a method of crowd control

during demonstrations in 1991. Most of these demonstrations were apparently peaceful. In one case, during a demonstration at the funeral for human rights activist Vedat Aydin, whose murder is described below, police fired live ammunition into a crowd of thousands in Diyarbakir, killing seven people. The police claimed, but eyewitnesses denied, that stones had been thrown at security forces. Whichever is the case, the throwing of stones would not have justified the use of lethal force. The U.N.'s Basic Principles on the Use of Force and Firearms by Law Enforcement Officials prescribe that "[l]aw enforcement officials shall not use firearms against persons except in self-defense or defense of others against the imminent threat of death or serious injury...and only when less extreme means are insufficient to achieve these objectives. In any event, intentional lethal use of firearms may only be made when strictly avoidable in order to protect life."

Helsinki Watch also received reports from southeastern and western Turkey of sixteen extrajudicial killings in 1991 under other suspicious and often unexplained circumstances.

On April 12, the Turkish Parliament enacted an extremely disturbing Anti-Terror Law. The law defines terrorism so broadly that almost anyone can be convicted, including, for example, anyone who presses for changes in Turkey's economic or social system. Terrorism is defined as "any kind of action conducted by one or several persons belonging to an organization with the aim of changing the characteristics of the Republic as specified in the Constitution, the political, legal, social, secular and economic system."

The Act contains other troubling provisions as well, which:

- o Limit the right of counsel for those charged with terrorism.
- o Make it more difficult to convict police or other government officials responsible for acts of torture.
- o Exempt police officers who have taken a confession from testifying in court about the circumstances of the confession.
- o Restrict prison privileges for convicted terrorists.
- o Limit meetings and demonstrations.
- o Curtail press freedom.

Since enactment of the Anti-Terror Law, Helsinki Watch has received many reports of people prosecuted for hanging political posters, holding meetings of relatives of prisoners, publishing articles or books concerning Kurdish questions, and similar offenses.

During 1991, scores of journalists, editors and writers were investigated, charged, tried and sometimes convicted for what they had written, edited or published. *The Turkish Daily News* reported in May 1991 that members of the press had faced a judge 586 times during 1990, and had received final sentences totaling over 126 years in prison. Statistics for the number of cases prosecuted in 1991 are not yet available, but Helsinki Watch has seen no indication of a decrease in the number of journalists and others who have been prosecuted.

In the early months of 1991, journalists and writers were frequently charged under Articles 141, 142 and 162 of the Penal Code, which were aimed at combating communism, separatism and advocacy of a religious state. After the repeal of these articles, and the release from prison of dozens of journalists and writers who had been charged under these provisions, journalists began to be charged under the new Anti-Terror Law. Writers have been tried for such offenses as "criticizing" or "insulting" President Ozal, printing "anti-military propaganda," "criticizing the Turkish judicial system," and "humiliating the spiritual dignity of the government via publication."

Turkish authorities also confiscated and banned dozens of issues of small, mostly left-wing journals, raided editorial offices, and detained and tortured journalists. The target of this abuse was mostly journals that report on the situation in southeastern Turkey. Decree 413, issued in April 1990, and its successor decrees, 424 and 430, have sharply restricted press coverage of the Kurdish struggle in the southeast. The journals *2000'e Dogru* (Towards 2000), *Hedef* (Target), *Deng* (Voice), *Yeni Cozum* (New Solution), *Mucadele* (Struggle) and *Yeni Ulke* (New Land) have been particularly at risk.

Freedom of assembly continues to be restricted in Turkey. During 1991, dozens of meetings, demonstrations and marches were banned, and dozens of demonstrators and marchers were prosecuted. In addition, as noted, police have used live ammunition as a method of crowd control, shooting and killing with no apparent justification ten people during large demonstrations.

Turkish associations continue to be restricted and, in some cases, closed. In February 1991, the Turkish Human Rights Association reported that, during 1990, the government had closed twenty-seven associations,

raided fifty-nine others, and detained hundreds of association members. Statistics for 1991 are not yet available.

Associations closed during 1991 include: Ozgur-Der (the Association of Fundamental Rights and Freedoms); the Kadikoy, Istanbul, branch of People's Houses; the Construction Workers' Solidarity Association; and the Cankaya and Kecioren People's Houses. Other branches of the People's Houses were raided, as was the Revolutionary Youth Association in Istanbul. In addition, eight members of the Nurses' Association were tried for a lunch boycott organized to protest a ban on public officers organizing a union.

The Kurdish minority in Turkey continues to be a target of government abuse in 1991. Thousands of villagers in the southeast have abandoned their homes, fields and animals rather than comply with government orders to provide armed village guards to assist security forces. Kurdish villagers are frequently caught between the separatist guerrilla group, the PKK, and security forces. Village guards are particularly targeted by the PKK, but the PKK killed civilians as well. In addition, Kurdish villagers were detained, tortured and imprisoned by security forces.

The Turkish government continues to deny the ethnic identity of the Kurdish minority. Although a law outlawing the use of the Kurdish language was repealed in April, Kurdish continues to be forbidden in official settings, at public meetings, and in prison meetings between lawyers and their clients. No books, magazines or other written materials are permitted to be published in the Kurdish language, and restrictions on Kurdish music and dance remain in force.

The Right to Monitor

A large human rights association, with branches in nearly every province, continues to operate legally in Turkey, but human rights monitors, particularly those in southeastern Turkey, were under attack during 1991. On July 5, former teacher Vedat Aydin, one of the founders of the Diyarbakir branch of the Human Rights Association (HRA) and the president of the People's Labor Party (HEF) in Diyarbakir, was taken from his home by several armed men who identified themselves as police officers. On July 8, his body was found at a roadside outside of Diyarbakir; his skull was fractured, his legs were broken, and his body contained fifteen or sixteen bullet wounds. No one has been charged with

his slaying.

Aydin's murder was the fourth violent incident directed at members of the Human Rights Association in southeastern Turkey during June and July. On June 18, an explosive device destroyed the car of lawyer and HRA member Mustafa Ozer, which was parked outside his house. On June 25, at midnight, the Diyarbakir office of the HRA was bombed, causing extensive damage. On July 2, a car bomb exploded in Batman, injuring Siddik Tan, a board member of the Batman HRA, his ten-year-old son and a friend. Earlier, the Siirt branch office of the HRA was destroyed and the secretary of the Urfa branch of the HRA, Ramazan Ferat, was beaten.

Activities of three HRA branches — in Batman, Gaziantep and Urfa — were suspended by provincial governors during 1991. The Mersin branch was closed by the government in May.

Members of the HRA continue to be detained and sometimes charged. In two cases, in Ankara and Gaziantep, board members of the association were acquitted of charges involving their association activities.

U.S. Policy

Despite reported behind-the-scenes efforts to persuade the Turkish government to make changes, and public criticism of Turkey's human rights practices by the State Department and the U.S. Embassy, the Bush Administration has had no visible impact on the human rights situation in Turkey. This inability to promote an end to serious human rights violations was due in large part to the Administration's unwillingness to link aid and human rights, as required by U.S. law.

Turkey continues to be an important U.S. ally, a fact highlighted in 1991 by the Turkish government's active support of the United States during the Persian Gulf conflict. President Bush's visit to Turkey in July was the first by an American president in over thirty years. He emphasized the need for "a new strategic relationship based on closer political, security, and economic links," and went on to say:

We value Turkey's NATO partnership, its commitment to democracy, and its integral position in the Western community. And Turkey played a critical role, as we all know, in the international coalition that liberated Kuwait, valiantly serving our common interests in a lawful, international order and a

stable region.

President Bush praised Turkey and President Ozal throughout his visit. During a state dinner, President Bush said, "There has been no country as resolute as Turkey and no ally like President Ozal." He referred to Turkey as his "second home."

According to the State Department, President Bush noted in his arrival speech in Turkey that human rights are a priority for the United States. State Department sources assert that human rights were raised during the president's meetings with President Ozal. Following the meetings, a senior White House official said in reference to President Bush's advocacy of respect for human rights, "There's really not much else we can do," although the president had made no public mention of such specific abuses as torture, repression of Kurdish civilians, or restrictions on freedom of expression and association.

Greater specificity was found in the chapter on Turkey in the State Department's *Country Reports on Human Rights Practices in 1990*, which described more accurately than previous reports the appalling human rights picture in the country. Issued in February 1991, the report stated that torture "remains one of Turkey's principal human rights problems." The report also described in some detail restrictions on freedom of expression, proscriptions against Kurdish culture and language, overcrowded prisons, and the use of excessive force against noncombatants in the southeast.

However, the report seriously understated Turkey's human rights abuses. For example, it stated that "many persons charged with political crimes are tortured and...significant numbers charged with ordinary crimes are subjected to police brutality." But Turkish lawyers, human rights activists and former detainees report that approximately ninety percent of political detainees and fifty percent of criminal suspects are tortured. The report also stated that "it is unclear whether any people died of torture during 1990." But Helsinki Watch has the names of seven people who died in suspicious circumstances during detention at various police stations. The report also understates the government's repressive actions against Turkish Kurds in southeastern Turkey: forcibly evacuating mountain villages in which villagers have refused to serve in the security forces as village guards; sending eight Kurdish "troublemakers" into internal exile in late 1989 and early 1990; and detaining large numbers of Kurdish civilians with no known connection to the PKK.

Despite even the serious and ongoing human rights violations in Turkey described in the *Country Reports*, the State Department continues to assert that progress is being made, apparently to discourage questioning of the massive U.S. aid program. In March, in a report to Congress justifying military aid to Turkey, the State Department described Turkey as "an open, democratic society with an improving human rights record," although it went on to concede:

[S]ignificant problems remain. Chief among them are torture, certain restrictions on freedom of expression, proscriptions against Kurdish culture and language, overcrowded prisons, and the use of excessive force against noncombatants in the southeast to suppress terrorism.

The same month, in a written response to questions raised by Representative Lee Hamilton, chairman of the House Subcommittee on European and Middle Eastern Affairs, the State Department elaborated on the problem of torture in Turkey:

Ambassador [Morton] Abramowitz has raised at the highest levels of the Turkish Government our concern over the continuation of torture. The President, Prime Minister, cabinet ministers, and leading parliamentarians are all aware of the seriousness with which we view this issue. Ambassador Abramowitz has made human rights a priority issue for the Mission and the importance assigned to it has not gone unnoticed by the Turkish Government, media, and people. He has frequently spoken about it in speeches. Embassy contacts note the concern expressed at high government levels filters down to working level security officials.

The Turkish government is opposed to torture. This practice is not condoned by the Government and has been widely condemned both publicly and privately, by officials from the President on down. The Minister of Justice has said torture is intolerable and that the Government is committed to "an all-out fight" against it.

Nevertheless, credible reports of torture persist throughout Turkey. Torture and mistreatment tend to be directed at

political detainees during periods of incommunicado detention. Prosecution of torture allegations is increasing and the percentage of convictions in 1990 showed a small increase over 1989. However, acquittals exceed convictions, a large portion of allegations are dismissed after the preliminary investigation, and those found guilty generally receive light sentences.

At the same time, there are signs that progress is being made. There is free and open debate on human rights issues — in the Government, in the press, and among private citizens. The media give generous coverage to human rights reports by such organizations as Amnesty International, Helsinki Watch, and the State Department. The Turkish Government has made efforts to curb the practice of incommunicado detention during which most torture is alleged to occur. Nevertheless, attorney access to political detainees is still frequently denied. The Government has been responsive to our inquiries for information on specific cases of concern to Senators, Congressmen, and human rights activists.

In March, James Dobbins, acting assistant secretary of state for European affairs, told Chairman Hamilton that there were improvements in the treatment of the Kurds in Turkey in that they had "received some additional freedom to use their language, and...more is being proposed by the government." In fact, as noted above, the Kurdish language is still forbidden in official settings, at public meetings, and in prison meetings between lawyers and their clients — even when the clients do not speak Turkish. In addition, no books, magazines or other written materials are permitted to be published in Kurdish, and Kurdish music and dance continue to be restricted. The "more [freedom] proposed by the government" has yet to be announced.

Chairman Hamilton continued his exchange with the State Department about human rights abuses in Turkey in a July 17 letter. According to Chairman Hamilton, the August 5 response from Janet Mullins, assistant secretary of state for legislative affairs, spoke of positive advances on human rights issues, but failed to mention developments that "undermined the impact of some of these steps." Secretary Mullins made no mention of torture; the use of live ammunition as a method of crowd control; harassment; arrest, torture and imprisonment of Turkish Kurds; forced evacuation of Kurdish villagers who refuse to serve as village guards; the enactment of the draconian Anti-Terror Law; and restrictions of freedom of expression.

At the September meeting in Moscow of the Conference on the Human Dimension, part of the Conference on Security and Cooperation in Europe, U.S. Ambassador Max Kampelman stated, in reference to Turkey:

Police brutality and torture are much too prevalent. These and related incidents of violence by government inaction do unnecessary damage to Turkey's reputation in the international community. Turkey, in these days of dramatic change and rising expectations, has an opportunity to exercise world leadership.

However, despite the Administration's and his own assessment of the importance of human rights, Ambassador Abramowitz did not publicly criticize the enactment of the Anti-Terror Law, the suspicious deaths in detention, the use of live ammunition for crowd control, continued restrictions on freedom of expression, or the abuse of the Kurdish minority in the southeast. Concerning the deaths of suspected terrorists in police raids, Ambassador Abramowitz sharply criticized Helsinki Watch for issuing a newsletter calling for an end to such practices and suggested that the actions of the Turkish authorities were justified by the terrorist acts carried out by the militant group, Dev Sol, even though international law forbids summary execution regardless of the crime attributed to the victim. Ambassador Abramowitz wrote:

Dev Sol has nothing to do with human rights. Dev Sol has murdered two innocent Americans and wounded a third in the past year. The group has murdered dozens of high ranking Turkish officials, bombed the American Cultural Center in Izmir and the American Consulate in Adana....As a result of the Turkish action against this group, I am glad to say they were not safe to attack the President or other Americans.

Despite its open acknowledgment of at least the pattern of torture in Turkey, the Administration has failed to comply with Section 502B of the Foreign Assistance Act of 1961 (as amended), which prohibits military and other forms of security assistance to a country that "engages in a consistent pattern of gross violations of internationally recognized human rights." Section 502B requires the Administration, if it wishes to provide aid to such a country, to submit to Congress a written statement by the president explaining the "extraordinary circumstances warranting

provision of such assistance." Neither the Bush Administration nor any previous Administration has submitted such a statement to Congress, let alone cut off security assistance to Turkey.

The U.S. government is also required by Section 701(a) of the International Financial Institutions Act of 1977 to oppose loans from multilateral lending institutions to countries that engage in a pattern of gross violations of internationally recognized human rights. Nevertheless, in the first six months of 1991, the Administration approved nine loans to Turkey totaling \$652.6 million from the International Bank for Reconstruction and Development, the International Development Association, and the International Finance Corporation.

Turkey continues to be the third largest recipient of U.S. aid, after Israel and Egypt. In fiscal year 1991, Turkey received \$500 million in military aid plus \$3,400,000 for military training. This was a slight increase over military assistance in fiscal year 1990, which totaled \$497,850,000. Half of the 1991 military aid, \$250 million, was to enable the Turks to acquire F-16 fighter jets. The rest, according to the State Department, was used for modernization programs for frigates and tanks, spare parts, and operation and maintenance expenses. In a special grant, Turkey also received an additional \$82 million to compensate it for some of the expenses incurred during the Persian Gulf War, plus allied air defense equipment was donated to Turkey during the crisis. Other economic assistance in fiscal year 1991 was \$50 million, up from \$14,200,000 in the 1990 fiscal year, and about \$300,000 to combat drug trafficking.

The Administration has asked Congress to authorize \$703.5 million in military and economic assistance for fiscal year 1992, a considerable increase. Some of the money would help Turkey to acquire more F-16 fighter jets. The Administration has also announced its intention to provide excess military equipment to Turkey during fiscal year 1992. In testimony in March before the House Subcommittee on European and Middle Eastern Affairs, Defense Department spokesman Bruce Weinrod indicated that the value of such equipment provided in 1990 and 1991 totaled \$128 million.

Ambassador Abramowitz, until he left his post in August, continued to raise human rights concerns in speeches to Turkish groups, and to describe the protection of human rights as a major objective of the Embassy and the U.S. government. Under his direction, the Embassy also took a number of steps relating to human rights:

- o In May, it assisted the Turkish-American Association in sponsoring a human rights seminar entitled "Sharing Strategies for Human Rights Legislation." Two American speakers addressed the seminar: U.S. District Judge Mark Wolf, of Boston, who spoke on the role of an independent judiciary in implementing human rights, and Professor Burt Neuborne of New York University School of Law, who spoke on civil liberties. Turks who took part included Eyup Asik, chairman of the Parliamentary Human Rights Commission; Fuat Atalay, a parliamentarian from the Social Democratic People's Party; and Nevzat Helvacı, president of the Human Rights Association (HRA).
- o Embassy officers met with representatives of the HRA, the Human Rights Foundation, the Contemporary Lawyers' Association, and the Parliamentary Human Rights Commission.
- o Embassy staff attended the HRA's "Human Rights Week" programs in December 1990, met with HRA branches in Istanbul and Bursa in September 1991, and visited the Human Rights Foundation's Center for the Rehabilitation of Torture Victims in May 1991.
- o Embassy staff attended the trial of sociologist Ismail Besikci in October, and plan to attend the forthcoming trials of attorneys Murat Demir, Bedeyii Karagici and Fethiye Peksen.
- o An Embassy officer attended an October symposium on the International Protection of Human Rights, attended by European human rights institutional personnel and Turkish officials and academics.
- o Embassy officials report that they have investigated dozens of cases alleging human rights abuse and have protested discriminatory laws, regulations and practices to Turkish officials.

The U.S. Ambassador-designate to Turkey, Richard Barkley, took a useful first step in October by requesting meetings with both Helsinki Watch and Amnesty International to hear their evaluations of the human rights situation in Turkey.

Helsinki Watch recommends that the U.S. government publicly condemn the human rights abuses detailed in this report and, as required

by Section 502B of the Foreign Assistance Act, state clearly what, if any, extraordinary circumstances warrant provision of military and security assistance to Turkey in light of its consistent pattern of gross violations of human rights. In addition, we recommend, as we have in the past, that the Administration use its best efforts, including linkage to aid, to persuade the Turkish government to:

- o Acknowledge the pattern of torture in police detention centers and take aggressive steps to end it.
- o Enforce the September 1989 decree guaranteeing detainees the right to be represented by attorneys from the moment of detention.
- o Prohibit the use in court of confessions obtained by torture.
- o Prosecute and increase sentences for torturers.
- o Allow the International Committee of the Red Cross and other international organizations to visit detainees and prisoners on a regular basis.
- o Release from custody all those held for the peaceful expression of their political views.
- o Deploy nonlethal methods of crowd control and, in particular, end the use of live ammunition except when necessary to prevent a threat to life.
- o Punish appropriately security force members who kill civilians without justification during demonstrations.
- o When conducting police raids on suspected terrorists' houses, abide by international standards requiring law enforcement officials to use lethal force only when absolutely necessary and in proportion to the immediate danger faced.
- o Stop all legal actions brought by the government against the press, writers and publishers based on the views they express in their writings or the factual material they report.

- o Rescind the decrees that succeeded Decree 413 and restore the rights to freedom of expression and movement suspended by those decrees.
- o Repeal the Anti-Terror Law.
- o Acknowledge the existence of the Kurdish minority in Turkey and grant its members the civil and political rights held by other Turks.
- o End restrictions that deprive Kurds of their ethnic identity, including restrictions on the use of Kurdish language, music and dance.
- o Abolish the village guard system.
- o End efforts to relocate civilians from troubled areas except in instances in which the security of the civilians or imperative military necessity so demand.
- o Punish appropriately the abuse and humiliation of civilians by security forces.

The Work of Helsinki Watch

During 1991, Helsinki Watch continued its attempts to improve human rights in Turkey by focusing attention on Turkey's dreadful human rights record and trying to persuade the Bush Administration to pressure the Turkish government to end human rights abuses.

In February, Helsinki Watch issued two newsletters — "Turkey: Five Deaths in Detention in January," and "Turkey: Two More Deaths in Detention in February" — which detailed the suspicious deaths in detention of seven people. A third newsletter the same month reported on a violent crackdown on anti-war demonstrations which resulted in two deaths and many injuries.

In June, Helsinki Watch issued a newsletter, "Turkey: New Restrictive Anti-Terror Law," which described and explained the new Anti-Terror Law and its restrictive uses. The same month, Helsinki Watch issued a newsletter, "Freedom of Expression in Turkey: Abuses Continue," which detailed scores of violations of freedom of expression — in the press, publishing and the arts.

In July, a newsletter, "Turkey: Human Rights Activist Killed; Police

Shoot and Kill Three at his Funeral: Human Rights Association Attacked," was issued describing the killing of human rights activist Vedat Aydin, other violent attacks on human rights monitors and officials, and the fatal shooting by security forces of seven participants in Aydin's funeral procession.

At the end of July, Helsinki Watch released a newsletter, "Turkey: Torture, Killings by Police and Political Violence Increasing," which condemned increases in torture, killings by police and political violence. The newsletter described a marked increase in the number of suspicious deaths in detention, as well as killings of demonstrators by security forces and of suspected terrorists in police raids. The newsletter also described and condemned an increase in violent acts of political terrorism, including assassinations of thirteen people during 1991, and attacks by the PKK on civilians in the southeast.

Some of Helsinki Watch's newsletters were covered in the Turkish press.

At the time of President Bush's visit to Turkey, an op-ed article written by Helsinki Watch appeared in *Newsday*, and editorials based on Helsinki Watch's monitoring in Turkey appeared in *The New York Times* and *The Washington Post*.

Throughout the year, Helsinki Watch sent protests to Turkish officials concerning detentions, trials and abuses of human rights activists, journalists and lawyers. Some of these protests were reported in the Turkish press.

UNITED KINGDOM

Human Rights Developments

The United Kingdom receives relatively little attention from the international human rights community. Yet in recent years freedom of expression in Britain has been restricted; there is an appalling use of lethal force by all sides to the conflict in Northern Ireland, and the U.K. emergency legislation there suspends certain basic due process guarantees; and conditions in many British prisons violate international standards.

Northern Ireland

A state of emergency has existed in Northern Ireland since its partition from the Irish Free State in 1922. Various emergency laws enacted during this seventy-year period have given security forces — the police and the British army — broad powers to suspend civil and political rights. Since repeal of the Special Powers Act in 1973, police powers to address political violence have been defined by the Northern Ireland (Emergency Provisions) Act (EPA), originally enacted in 1973, and the Prevention of Terrorism (Temporary Provisions) Act (PTA), in effect since 1974. The EPA applies only to Northern Ireland; the PTA applies to all of the United Kingdom. Both acts have been regularly renewed by the British Parliament.

Among the powers conferred by these emergency acts are:

- o the power to stop and search people; anyone can be required to answer questions regarding his or her identity and recent movements.
- o the power to arrest, detain and interrogate suspects for up to seven days without a criminal charge and without an appearance before a judge.
- o the power to search residences without prior judicial authorization.
- o the power to exclude people from Northern Ireland or all of the United Kingdom without a trial and without judicial review.
- o the power to detain people by executive order, although this power of "internment" has not been used since 1976.

The legislation also declares certain paramilitary organizations illegal and makes membership in them a criminal offense; suspends trial by jury for a large number of "scheduled offenses," including murder, armed robbery, possession of explosives, and certain lesser offenses; and sets a lower standard for the admissibility of confessions than is applicable in the rest of Britain.

The U.K. has enacted other legislation and issued administrative orders that affect people charged with or suspected of involvement in

politically motivated violence, such as the 1988 Criminal Evidence (Northern Ireland) Order, which curtails the right of suspects not to have inferences drawn against them from their silence.

Over half (54.4 percent) of the 2,900 deaths since "The Troubles" began in 1969 have been of civilians with no known connection to political violence. Another 31.1 percent have been police or soldiers. Members of paramilitary groups (known as paramilitaries) make up the rest; 10.6 percent of the deaths were of Republican paramilitaries (Nationalists who favor a unified Ireland) and 2.6 percent were Loyalists (Unionists who favor maintaining union with the United Kingdom).

The level of violence by paramilitary groups is appalling: paramilitaries were responsible for 2,313 murders between 1969 and 1989 — 1,608 people were killed by Republicans and 705 by Loyalists. Most of those killed — 1,206 — were civilians with no known connection to political violence (574 of these were killed by Republicans and 632 by Loyalists). During the same period, Republican paramilitaries killed 847 members of security forces, and Loyalist paramilitaries killed ten.

Paramilitary groups use such barbaric tactics as the Irish Republican Army's "human bombs" — people strapped into vehicles loaded with explosives and sent to bomb security checkpoints — as well as bombs aimed at civilian targets. Loyalists carry out "tit-for-tat" killings by going into Catholic areas and killing Catholics at random in revenge for Republican killings of Loyalists.

Killings of civilians by paramilitary groups violate the fundamental prohibition in international humanitarian law against targeting civilians. In addition, paramilitary groups kill security-force members and opposing paramilitaries by approaching them disguised as civilians, in violation of the principles of customary international humanitarian law that prohibits perfidy because it breaks down the distinction between combatants and civilians. As for killings carried out by security forces, police and soldiers killed 329 people between 1969 and 1989; of these, 178 were civilians, 123 were Republican paramilitaries, thirteen were Loyalist paramilitaries, and fifteen were themselves security-force members.

The use of plastic bullets — supposedly nonlethal weapons — for crowd control has also resulted in fatal shootings. Fourteen people have been killed by plastic bullets fired by security forces since 1973.

Members of security forces who have killed civilians or paramilitaries are rarely prosecuted. Since 1969, police or soldiers have been prosecuted in only nineteen cases in which killings took place while they were on duty. In only three of these cases have defendants been found guilty of

murder or manslaughter. The only member of the regular British army to have been found guilty of a murder committed while on duty received a life sentence, but he was released from prison after serving only two years and three months of his sentence, and was allowed to rejoin his regiment.

One problem in prosecuting members of security forces is that under British law if a police officer or soldier intentionally kills someone, he or she may be charged only with the offense of murder. No lesser charge, such as manslaughter, can be filed.

Because police and soldiers are so rarely prosecuted for fatal shootings, often the only way that a family can discover what happened to a person who was shot and killed is during a coroner's inquest. But coroners' inquests are subject to inordinate delays; coroners' juries are not permitted to reach full verdicts;³⁰ security-force members implicated in deaths are not required to testify; and victims' families and their attorneys are denied access to evidence before an inquest begins. There are significant problems in detention. The U.K.'s Prevention of Terrorism Act permits detentions for up to seven days. The European Convention on Human Rights requires that detainees be brought "promptly" before a judge. In 1988, the European Court of Human Rights ruled that a detention of four days and six hours did not meet the "promptness" requirement. The U.K. then formally derogated from that provision of the European Convention.

There have been many charges of physical abuse of suspects in detention from both detainees and attorneys. Some of these allegations have been upheld in court. A detainee's access to his or her attorney is frequently delayed. The power to intern without trial remains part of the emergency laws of Northern Ireland, although it has not been used for fifteen years.

Security forces frequently stop, search and question people on the street, often in an inhuman and degrading manner. In addition, members of the police and army have conducted thousands of destructive house searches, some of which appear to violate Northern Ireland laws. A high percentage of these do not produce weapons or equipment used for bombings.

³⁰ These juries cannot find, for example, an "unlawful killing by unarmed persons," but only that "death resulted from a bullet in the head."

The right to a fair trial has been significantly compromised. The right to trial by jury has been withdrawn from defendants in cases that allegedly involve political violence ("scheduled offenses"). The list of scheduled offenses is overly inclusive. Standards used in Diplock Courts (special courts set up under the Northern Ireland emergency provisions) permit the admission into evidence of unreliable confessions, some of which may have been secured by abusive treatment in detention.

The Prevention of Terrorism Act provides for orders excluding from Northern Ireland or Great Britain people suspected of involvement with terrorism. People have been excluded without a hearing and without notice of the charges against them; they are simply informed that they are suspected of involvement with terrorism.

Freedom of Expression

In recent years, there has been an erosion of free expression in Britain in a number of areas. The Official Secrets Act provides criminal penalties for revealing a broad range of foreign policy, defense and military information, regardless of whether the material has been previously disclosed elsewhere or its release is in the public interest. In 1989, facing widespread criticism over the *Spycatcher* case — in which the government enjoined the publication of the memoirs of a former intelligence agent — and the prosecutions of two civil servants, Sarah Tisdall and Clive Ponting, for leaking information to the press, the government introduced a reform of the Official Secrets Act. Although the scope of the law was narrowed, there remains an absolute ban on disclosures about the security and intelligence services, no matter how trivial. There is also a ban on disclosure of material pertaining to Britain's defense and international relations if the government asserts that disclosure will "endanger the interests of the United Kingdom abroad" or "seriously obstruct the promotion or protection of those interests." Despite a strong campaign by civil liberties advocates to include it, the new law, like the one it replaced, permits no room for a defense that disclosure is in the public interest or that the material involved is in the public domain or has been previously published elsewhere. In contrast to Canada, New Zealand, the United States and other European countries, there is no general right of access to government information in the United Kingdom.

British defamation law recognizes no defense that the plaintiff is a public figure or that the expression involved was in the public interest.

The burden is on the defendant to prove the truth of the challenged claim. In fact, many judgments have been awarded in cases in which the published facts later proved to be accurate, such as Cabinet Minister John Profumo's suit over the allegation that he had shared a prostitute with a KGB officer, and Liberace's suit against the *Daily Mirror* in 1959 for implying that he was gay.

The most-publicized recent defamation suit in Britain involved an award of 500,000 pounds (about \$1 million) to novelist and former Member of Parliament Jeffrey Archer over the suggestion that he had had sex with a prostitute, despite proof that he had given her 4,000 pounds (\$8,000). British libel laws have a very wide reach. Encouraged by a 450,000 pound (\$900,000) award won in Britain by a Greek citizen against a Greek newspaper that had circulated only fifty copies in Britain, former Greek Prime Minister George Papandreou sued *Time* magazine over a bribery allegation.

There is no affirmative right in the United Kingdom to engage in peaceful public assembly or to hold a meeting in a public place. Even to stand on a soapbox at the famous Hyde Park Speaker's Corner requires prior permission from the Department of the Environment. Urged in 1986 to include a right of peaceful assembly in the revision of the Public Order Act, the Home Office refused, but sent around a circular urging local police to bear the concerns of protesters in mind.

Reflecting the lack of affirmative protections for public protest, legislation in 1986 significantly expanded police power to control public marches, meetings and picketing. Proponents of the legislation capitalized on public concern in the mid-1980s over a series of inner-city riots, strikes by miners, marches by racist groups, and anti-nuclear demonstrations.

There is no practical right of appeal from police decisions to restrict or ban public assembly, unless they are found to lack any reasonable basis — something British courts have been strongly disinclined to find. The broad power to order changes in the site of or number of participants in a demonstration carries the potential for interference with the intended message and impact of the protest. For example, a demonstration against the South African Embassy could be moved to the New Zealand High Commission, or a mass trade-union picket could be limited to a dozen persons.

If the chief constable believes a ban or restrictions on a specific demonstration are insufficient, he or she can apply to the local governmental authority for permission to impose blanket bans on all

processions for up to three months, subject to the approval of the Home Secretary. Blanket orders aimed at preventing marches by the racist National Front have resulted in the cancellation of "Save the Whales" rallies and the annual trade-union May Day procession in London.

The 1986 legislation also imposed, for the first time, a national requirement that the police be given six days' notice of demonstrations, with criminal penalties for failure to comply. While formerly the police could impose conditions on marches only on grounds that "serious public disorder" may result, they now may take action based on anticipated "serious disruption of the life of the community" or "serious damage to property" or if they believe that the purpose of the gathering is to intimidate people. The legislation also explicitly permits the police to impose limits on the numbers and the sites of meetings, demonstrations and pickets.

The Police and Criminal Evidence Act of 1984, which expanded police powers of search, arrest and detention, also broadened police authority to seize otherwise confidential papers — for example, journalists' untransmitted film — for purposes of investigating a "serious arrestable offense." After a March 1990 protest rally against the unpopular "poll tax" turned violent, the London police demanded that television stations and newspapers hand over unused film so the authorities could find and charge suspects. When news organizations refused, the police obtained court orders to compel twenty-nine of them, including the Associated Press, to hand over film taken at the rally. In addition to abridging freedom of the press, this action endangered journalists. At a later rally in October, photographers were singled out for attack from members of the crowd fearful of being photographed.

The Broadcasting Act permits the Home Secretary "at any time, in writing, [to] require the [broadcasting] authority to refrain from broadcasting any matter or classes of matter as specified." In 1988, Home Secretary Douglas Hurd invoked these powers to bar the British Broadcasting Corporation (BBC) and the Independent Broadcasting Authority from "broadcasting any words spoken whether in the course of an interview or discussion or otherwise, by a person who appears or is heard on the program in which the matter is broadcast where ... the person speaking the words represents or purports to represent" or whose words "solicit or invite support for" a list of specified organizations, including not only proscribed "terrorist" groups like the Irish Republican Army, but also two legal political parties — Sinn Fein, the legal political arm of the IRA, and a smaller group, Republican Sinn Fein.

The broadcasting ban has resulted in a lessening of coverage of events concerning Northern Ireland, and in self-censorship beyond the probable scope of the law because of difficulties in interpreting it. Deciding whether someone who is not a member of a listed organization will speak in "support" of a listed organization or will "solicit or invite support for such an organization" is not always easy. A broadcaster must either pre-record an interview and expurgate prohibited words, or play it safe and refrain from interviews. A number of people who are not members of listed organizations have been banned, including Brighton Labor Councillor Richard Stanton, former Member of Parliament Bernadette Devlin McAliskey; American author Margie Bernard; and an uncle of Paul Hill, one of the "Guildford Four," a group convicted of terrorist bombing who were recently released after their conviction was found to have been improper.

Prison Conditions

The United Kingdom has one of the highest prisoner-to-population ratios in Europe — about 97 per 100,000. Overcrowding throughout the prison system is a serious problem (prisons are filled at 103 percent nationwide³¹) but it is particularly dramatic in local, pretrial prisons, some of which are overcrowded by fifty percent.

Sanitary conditions are dismal in many British prisons. Many institutions are old, Victorian-era structures in which cells lack integral sanitation. Prisoners use chamber pots to relieve themselves and must do so in the presence of their cellmates. Inmates spend most of the time in their cells and between 7:00 P.M. and 8:00 A.M. are unable to leave the cell at all to empty the pot. The effect is that many cells become smelly and insect-infested.

Other hygiene-related problems noted by Helsinki Watch during visits to six prisons in England and Wales and two institutions in Northern Ireland include lack of clean clothing and bedding and insufficient availability of showers. There are also frequent complaints about the quality and quantity of food. Especially troubling is the timing of meals. The last meal is served at 4:00 P.M. in many institutions, and

³¹ A prison that is filled at one hundred percent of its capacity is in fact overcrowded because, in any institution at any given moment, some cells are temporarily unusable due to repair or other reasons.

breakfast is at 8:00 A.M. Inmates thus go for sixteen hours without food, leading some prisoners to complain that they are often hungry.

Excessive idleness is another serious problem for prisoners. At the large, pretrial prisons, where few work or educational programs are available, inmates spend as many as twenty-three hours each day in their smelly, overcrowded cells.

Detention of Foreign Nationals

A number of Arab residents in the United Kingdom suffered from arbitrary and unjustifiably harsh treatment by British authorities both prior to and during the Persian Gulf war. Between August 2, when Iraq invaded Kuwait, and January 17, when the allied attack began, British officials rounded up scores of Arab nationals, and served deportation notices on 167 Iraqis, Palestinians, Lebanese and Yemenis. Approximately half of these left prior to the outbreak of war.

Citing fear of terrorism after hostilities began, authorities detained and ordered deported an additional ninety Arab nationals. Thirty-five Iraqis were seized and declared prisoners of war, even though all but two were students studying in Britain. Though technically reservists (lengthy reserve service is mandatory in Iraq), these students were not on active duty and thus should have qualified as civilian internees, not prisoners of war — a distinction entailing considerable difference in conditions and length of detention.³² All prisoners of war were released unconditionally on March 6.

Fifty-two Iraqis and Palestinians were detained on "national security grounds" and were served with deportation notices. By early March, none had been deported and all were released.

These detentions and deportations were carried out without any semblance of due process, in violation of international standards. Detainees were not informed of the specific charges or evidence against them, had no right to legal representation, and had no statutory right of appeal. Many of those detained had resided in the United Kingdom for years without encountering any difficulties.

³² See Middle East Watch, "Arabs Detained in the U.K.," February 10, 1991, p. 3.

The Right to Monitor

The United Kingdom has several groups that monitor and protest abuses of human rights, including Liberty (the National Council for Civil Liberties) and Charter 88, organized in 1988 to press for a Bill of Rights and other constitutional reforms. While these groups are able to operate without harassment or government interference, the European Court of Human Rights ruled against Britain in 1988 in a case involving the listing of two women as security risks because they worked for Liberty.

The principal human rights monitoring group operating in Northern Ireland is the Committee on the Administration of Justice, also known as the Northern Ireland Civil Liberties Council. In recent years in Northern Ireland there has been a rise in threats made against lawyers who represent defendants in cases of criminal violence, especially since the 1989 murder of Patrick Finucane, a human rights lawyer, who was shot and killed at his home, in front of his wife and children. A Loyalist group, the Ulster Freedom Fighters, claimed credit for the murder, but no one has been criminally charged for the act.

U.S. Policy

The Bush Administration's view of the human rights practices of its close ally, the United Kingdom, is expressed publicly only in the State Department's annual *Country Reports on Human Rights Practices*. The *Country Reports* for 1990, published in February 1991, understate human rights abuses by the British government in Northern Ireland. Indicating correctly that ten people were shot and killed by security forces during 1990, the report states that these killings were "in the line of duty," and that several shootings "prompted allegations that soldiers were carrying out a 'shoot to kill' policy." It fails to state that in four of the six incidents the police version of the events was seriously disputed, and that some of these killings may have violated established principles of international human rights law.

In its section on torture, the report states that confessions obtained by torture are not admissible as evidence in court. It does not state that the standard for admission of confessions in the Diplock (non-jury) courts in Northern Ireland under the Northern Ireland (Emergency Provisions) Act differs significantly from the traditional rule that only "voluntary" statements may be introduced into evidence. In the Diplock courts, while

statements resulting from torture or inhuman or degrading treatment, or from threats of violence, theoretically cannot be admitted in court, statements resulting from "psychological pressure" or "inducements" can be taken into evidence. This broad exception to the traditional voluntariness standard may play a role in the widespread use of confessions induced by severe beatings in the Diplock courts.

Nor does the report discuss physical abuse during pretrial interrogation. Helsinki Watch met with many lawyers and former detainees who reported cases of serious physical abuse during interrogation. The safeguards that theoretically prevent such abuse — chiefly monitoring by closed-circuit television cameras — appear to be ineffective.

In its section of the denial of a fair public trial, the report refrains from using its own voice in describing a 1988 change in the law that permits courts to draw adverse inferences from the exercise of a suspect's right to silence during interrogation or at trial. The report puts forth the government's reasons for the change — to address the "wall of silence" and "ambush testimony" whereby a suspect does not speak until his trial and then presents a surprise alibi. However, while quoting an independent governmental body about fears that these moves could lead to "a cloak of confidence in justice in Northern Ireland," the report fails to indicate in its own voice that this change has fundamentally eroded the right to silence in Northern Ireland in all cases allegedly involving political violence.

In its section on freedom of peaceful assembly and association, the report overstates the United Kingdom's protection for peaceful public assembly by asserting that "except in cases of extreme civil disorder, in which public safety is judged to be at risk, the authorities do not exercise their statutory right" to limit rallies and demonstrations. A report on freedom of expression in the United Kingdom by Helsinki Watch and the Fund for Free Expression found that the police and local authorities have extremely broad powers to order changes in the site or nature of demonstrations and public meetings, and to impose "blanket bans" on all protests in a certain geographic area for up to three months at a time, and that such interventions are not rare. For example, during the summer of 1989, processions and marches within a four-mile radius of the Stonehenge monument were banned for a short period. The standard adopted in the 1986 Public Order Act permits such restrictions to be made on the basis of a risk of "serious disruption to the life of the community," which is a considerably weaker standard than "extreme civil

disorder."

The Work of Human Rights Watch

In January, Helsinki Watch sent its first fact-finding mission to investigate human rights abuses in Northern Ireland. In October, Helsinki Watch published the findings of the mission in a major report, *Human Rights in Northern Ireland*. The report concluded that human rights abuses are persistent and ongoing, affect Protestants and Catholics alike, and are committed by both security forces and paramilitary groups in violation of international human rights and humanitarian laws and standards. Helsinki Watch urged paramilitary organizations in both communities to put an end to such violence and called on the United Kingdom to enact legislation that strictly controls the use of lethal force in Northern Ireland. Helsinki Watch also recommended that the power to intern without trial be abolished, that a number of steps be taken to ensure the fairness of criminal trials, and that the powers provided under the Prevention of Terrorism Act to exclude citizens from one part of the United Kingdom to another be abolished.

On February 10, Middle East Watch published a newsletter condemning the British government for its arbitrary and illegal detention and deportation of Arab nationals. The newsletter called on the government to release all those detained or afford them basic due process rights.

In April, Helsinki Watch and the Fund for Free Expression sent a mission to Britain to investigate restrictions on freedom of expression in the United Kingdom. In October, they released a report, *Restricted Subjects: Freedom of Expression in the United Kingdom*. The report recommends the repeal of the Official Secrets Act — or, at a minimum, its reform to provide for a defense that the disclosure at issue serves the public interest or has been previously published elsewhere; a bar on the use of injunctions against the press for publishing material obtained in breach of confidence; the revision of the defamation laws to provide a higher burden of proof for plaintiffs — particularly those who are public officials or well-known public figures — and stronger defenses for those sued, such as the claim that publication serves the public interest; the revision of the Public Order Act to recognize an affirmative right of peaceful assembly and to limit police and local authority power over assemblies and demonstrations to the imposition of impartially applied

time, place and manner restrictions; and the rescission of the Northern Ireland "broadcast ban" and reform of the broadcasting statute to insulate the BBC and independent television and radio from government interference with program content.

In May, Helsinki Watch sent a mission to investigate prison conditions in the United Kingdom. A report on the mission is expected in early 1992.

YUGOSLAVIA

Human Rights Developments

General chaos in Yugoslavia, fueled by the virtual disintegration of central authority, armed conflict in Croatia, and continuing repression in Kosovo, yielded a dramatic worsening of the human rights situation in 1991. By the end of the year, the federal government of Yugoslavia had ceased to function and the European Community had decided to recognize Slovenia and Croatia by January 15, 1992. The federal army was controlled by Serbia. Power lay in the hands of nationalist republican governments, with policies that often led to severe violations of the civil and political rights of minorities.

On June 25, Slovenia and Croatia declared their independence. Macedonia followed suit on September 8, as did Bosnia-Herzegovina on October 15. Having declared their independence, Slovenia, Croatia, Macedonia and Bosnia-Herzegovina boycotted many federal institutions. In October, without the consent of Slovenia, Croatia, Macedonia or Bosnia-Herzegovina, Serbia and its three allies on the federal presidency — Kosovo, Vojvodina and Montenegro — announced that they would assume control of the federal presidency and certain powers of the federal assembly.

Soon after Slovenia declared its independence, the federal military attacked the republic but quickly retreated in defeat at the hands of Slovenian militia forces. The army then turned its attention to Croatia. In conjunction with rebel Serbs who oppose Croatian independence, the army has been waging a full-scale war against Croatia since July. With the support of Serbian President Slobodan Milosevic's government,

Serbian insurgents in Croatia have taken over forty percent of Croatia's territory and appear poised to impose Serbian rule over most of the republic. Inter-ethnic skirmishes threaten to destabilize the republic of Bosnia-Herzegovina, where Serbian and Montenegrin rebel forces have occupied territory as well. As violent political struggle rages, human rights in all parts of the country have suffered dramatically.

Helsinki Watch takes no position on Yugoslavia's territorial integrity or the claims to independence of its constituent republics. Our only concern is that the human rights of all individuals be respected. Most of the gross abuses are being committed by the federal military and the Serbian government. The Yugoslav armed forces bear responsibility for indiscriminate attacks against civilian targets in Croatia, with thousands of deaths and injuries the result. The Serbian government for years has been abusing the human rights of Albanians in the province of Kosovo and more recently has directly supported the Serbian insurgents in Croatia, who in turn have been committing gross violations of human rights, including the summary execution of unarmed civilians. Croatian security forces and individual extremists have also violated the human rights of Serbs.

The Serbian government's oppression of ethnic Albanians in Kosovo is the most protracted human rights problem in Yugoslavia. Physical mistreatment remains a serious problem, while systematic discrimination increased dramatically in 1991. Albanian professionals — particularly those working in the fields of medicine and education — were dismissed from their jobs and replaced with Serbian and Montenegrin workers. Over 20,000 Albanians lost their jobs because of ethnic discrimination during the year.

Serbian security forces, paramilitary units and civilians have used arbitrary force against unarmed Albanians, including children, killing fifty Albanians in 1991. Serbian security forces unlawfully searched Albanian homes, destroying property and beating inhabitants. Moreover, Serbian authorities are reportedly arming Serbian and Montenegrin civilians in Kosovo, who in turn are intimidating the Albanian population.

Ethnic Albanians continue to be jailed for nonviolent political "offenses," including possession of certain Albanian-language publications and participation in peaceful demonstrations. Most Albanians have been sentenced to thirty- to sixty-day prison terms for such "offenses." Albanians have been severely beaten while in police custody and in prison. The daily Albanian-language newspaper, *Rilindja*, remains banned.

From September 26 to 30, Albanians in Kosovo conducted a self-styled referendum on Kosovo's independence from Serbia. In some areas balloting took place in individual homes to avoid police interference. Despite such precautions, Serbian security forces seized voting materials and arrested organizers of the referendum, as well as individual voters.

The Serbian government used repressive methods against peaceful demonstrators in Belgrade on March 9 and 10. Excessive police force and an ensuing riot resulted in the deaths of a seventeen-year-old youth and one police officer. At least 203 were wounded. Demonstration participants and organizers were arbitrarily arrested and harassed.

A parliamentary commission that investigated the violence exonerated the police and blamed the demonstrators for the violence. Helsinki Watch believes that neither the commission nor its report was objective or independent from government control. The report does concede that, during the course of the demonstration, the Ministry of Interior lost control of the situation and its ability to coordinate police action. However, the report neither criticizes nor condemns such ineptitude or police brutality. The report also ignores the events in the early morning hours of March 11, when students crossing the Brankov Bridge into Belgrade were beaten by police forces. Rather, the report reiterates statements made by Serbian government officials exonerating the police from blame immediately after the violence took place.

During its attack on Slovenia, the Yugoslav military strafed and bombed Slovenian towns and cities with little apparent regard for civilian life. Although the army claimed that it was trying to restore federal control of all international border posts, it took few precautions to protect civilians from air and mortar attacks. At least five civilians were killed in the clashes in Slovenia. The ten-day conflict ended with the retreat of federal forces from the republic.

In Croatia, a full-scale war evolved. After the May 1990 election of a nationalist Croatian government under President Franjo Tudjman, the republic's Serbian minority took up arms, fearing a resurrection of the kind of fascist Croatian state under which thousands of Serbs were killed during World War II. With material support from the Serbian government and the federal military, Serbian insurgents in Croatia launched attacks in the eastern and southern regions of the republic. The federal army, with its overwhelmingly Serbian officer corps, bombed and sent tanks against major Croatian cities.

Key political leaders in both Serbia and Croatia have inflamed inter-ethnic animosities between Serbs and Croats. Indeed, nationalism has

been the linchpin of popular support in both republics. Serbian President Slobodan Milosevic justifies the repression in Kosovo and the aggression in Croatia as necessary to protect the Serbs living in those regions. Similarly, Croatian President Franjo Tudjman campaigned on a stridently nationalist platform and gratuitously inflamed Serbs in Croatia. Moreover, Tudjman made little, if any, effort to appease the fears of Serbs in Croatia after his election. Through their control of the republican media, Tudjman and Milosevic have grossly misrepresented and manipulated alleged reports of human rights abuses by both sides. The Serbian and Croatian media have perpetuated nationalist hysteria in both republics to the point that criticism of the war is viewed as tantamount to treason by some.

The war in Croatia has been characterized by numerous violations of human rights and humanitarian law. Civilians and persons placed *hors de combat* have been summarily executed by both Serbian insurgents (reportedly in eight instances) and Croatian security forces (reportedly in three instances). On July 26, Serbian insurgents seized some forty civilians — including elderly people and a mentally retarded woman — and used them as human shields during an advance on Croatian positions. The Serbian rebels have also taken hostages in the hope of exchanging them for rebels held by Croatian authorities. Some forty Croats were not being permitted to leave the village of Old Tenja, a Serbian stronghold. Medical vehicles and personnel, including representatives of the International Committee of the Red Cross, have been fired upon. The Serbian insurgents have held medical personnel hostage and mistreated them during detention. Serbian insurgents, Croatian security forces and the federal army have all beaten their prisoners. Serbian rebels also have used electric shocks on their prisoners.

The Yugoslav military and Serbian insurgents have targeted major urban centers in Croatia. In many cases, these attacks have been indiscriminate and have resulted in loss of civilian life. The Yugoslav air force has bombed and strafed major Croatian cities. Homes, churches, schools, hospitals and cultural monuments have been attacked. Civilians account for approximately half of the dead and one third of the wounded. Hundreds of thousands of Croats, Serbs and others have been forced to flee their homes.

Ethnic discrimination is also a serious problem in Croatia. Individual Croatian workers required their Serbian colleagues to sign loyalty oaths to the Croatian government; those who refused often lost their jobs. The Croatian government belatedly condemned such campaigns but did not

prosecute the organizers. Similarly, Croats have been dismissed from their jobs in the Serbian-controlled areas of Knin, Gracac and Glina.

In a campaign of intimidation, both Serbs and Croats have destroyed civilian property, including homes and summer residences. In some cases, entire villages have been burned.

The indiscriminate use of land mines has prevented medical personnel and relief organizations from evacuating the wounded and distributing humanitarian aid in parts of Croatia. A twelve-vehicle convoy, organized by Doctors Without Borders, evacuated 109 seriously injured people from the besieged town of Vukovar on October 19. Leaving the town, one of the trucks hit a mine and two nurses (from Switzerland and Luxembourg) were injured. Local Red Cross personnel have been hampered from evacuating the dead and wounded by the continued fighting and the placement of land mines around besieged towns and villages.

The Right to Monitor

In 1991, in contrast to 1990, there was no direct interference by the federal or republican governments with the right of domestic and international groups to monitor the human rights situation in Yugoslavia. However, various obstacles impede the ability to monitor human rights effectively in various parts of the country.

Human rights monitoring in Croatia and parts of Bosnia-Herzegovina became increasingly difficult and, indeed, dangerous as the year progressed. Land mines, road barricades, vigilante violence and indiscriminate shooting at civilian vehicles made travel and on-site investigation of abuses extremely difficult in Croatia. Nevertheless, various medical, religious and governmental bodies have monitored violations of human rights and humanitarian law. The Croatian government, through a Croatian parliamentary commission on human rights and the republic's Ministry of Labor and Social Welfare, has made a genuine, though not comprehensive, effort to collect data about employment and other forms of discrimination against both Serbs and Croats and has made that information available to international and domestic human rights groups.

Various Serbian groups also monitor violations of the rights of Serbs in Croatia. Helsinki Watch received no reports of Croatian government interference with such activities.

On three separate occasions in 1990, the Serbian government detained international human rights monitors in Kosovo. Helsinki Watch received no reports of similar actions in 1991. The major human rights monitoring group in Kosovo, the Council for the Defense of Human Rights and Freedoms in Kosovo, continued to monitor abuses without direct interference by the Serbian government.

The Policy of the European Community

The EC has toiled to bring about a peaceful resolution to the conflict in Croatia. It has sent observers to monitor and negotiate cease-fire agreements, only to be shot at by all parties. It has negotiated meetings between the warring factions and established working groups to discuss the future of Yugoslavia, all to no avail. It has negotiated at least thirteen cease-fires, none of which has been respected by the feuding parties.

The EC has considerable leverage to press for greater respect for human rights and humanitarian law. It is Yugoslavia's largest trading partner, accounting for sixty percent of Yugoslavia's foreign trade. In 1990, Yugoslavia received over \$1.5 billion in assistance from the EC. In November, the EC imposed economic sanctions against all of Yugoslavia's republics because of continued violations of cease-fire agreements. The sanctions included the suspension of the EC's 1980 trade and cooperation agreement with Yugoslavia, restoration of the EC's quantitative import limits on Yugoslav textiles, the removal of Yugoslavia from the list of beneficiaries of the General System of Preferences, and formal suspension of benefits under the EC-administered "Phare" food and economic assistance program.³³ The EC also suspended trade relations with Yugoslavia and proposed that the United Nations Security Council impose an oil embargo against Yugoslavia.

On December 2, the European Community lifted sanctions against all the Yugoslav republics except Serbia and its ally, Montenegro. A report from the EC monitoring mission harshly criticized the federal army for "brutally attacking civilian targets" and "wantonly destroying

³³ Robert Mauthner and Laura Silber, "EC Puts Sanctions on Yugoslavia," *Financial Times*, November 10, 1991.

Croatian villages."³⁴

Because of the systematic violation of human rights and humanitarian law in Croatia by Serbian-backed paramilitary groups and the Serbian-led federal army and the Serbian government's continued repression against ethnic Albanians in Kosovo, Helsinki Watch welcomes the EC's maintenance of sanctions against the government of Serbia. Helsinki Watch also calls upon the EC to urge the Croatian government to take steps to protect the human rights of all ethnic groups in Croatia and to punish those found guilty of violating those rights.

On December 17, the EC, under pressure from Germany, announced that it would recognize Slovenia and Croatia by January 15, 1992, provided that they guaranteed respect for existing borders, human rights, and the rights of minorities.

U.S. Policy

In contrast to the EC's activism, the Bush Administration has reacted sluggishly and ineffectively to the crisis in Yugoslavia. Although the United States, particularly the Embassy in Belgrade, has publicly criticized human rights abuses in Yugoslavia, the Bush Administration devoted too much energy in trying to preserve Yugoslav unity and the faltering government of Prime Minister Ante Markovic rather than address the human rights violations by individual republican governments.

In November 1990, President Bush signed into law legislation that appropriated foreign assistance for fiscal year 1991. It included a provision barring bilateral assistance to Yugoslavia and requiring U.S. representatives to oppose loans to Yugoslavia by international financial institutions unless all six of the country's republics had held free and fair multiparty elections and none was engaged in a pattern of gross violations of human rights. Known as the Nickles amendment, this provision took effect on May 6. The law permitted the president to waive the provisions if Yugoslavia was found to be making "significant strides towards complying with the obligations of the Helsinki Accords and [was]

³⁴ Laura Silber, "Serbia Excepted as EC Lifts Yugoslav Sanctions," *The Washington Post*, December 3, 1991. See also Chuck Sudetic, "Observers Blame Serb-Led Army for Escalating War in Croatia," *The New York Times*, December 3, 1991.

encouraging any republic which has not held free and fair elections to do so."

By May 1991, all the republics had held elections, although the elections in Serbia and Montenegro were neither free nor fair.³⁵ In addition, severe human rights abuses were still being committed by the Serbian government against the Albanian majority in Kosovo. Given these problems, Helsinki Watch welcomed the suspension of five million dollars of U.S. aid to Yugoslavia and U.S. opposition to Yugoslavia's loan requests before the World Bank and the International Monetary Fund. State Department spokeswoman Margaret Tutwiler announced that aid to Yugoslavia was being cut off because the Serbian leadership was exercising "severe repression in...Kosovo..., had not conducted fully free and fair elections, and was...acting to destabilize the Yugoslav presidency."³⁶

However, after a twenty-day suspension, economic aid was restored when Secretary of State James Baker invoked the amendment's certification mechanism. The restoration of aid was coupled with the invocation of Step Two of the Human Dimension Mechanism established by the Conference on Security and Cooperation in Europe (CSCE)³⁷ — a formal request for bilateral discussions — and the suspension of Overseas Private Investment Corporation (OPIC) risk insurance for new

³⁵ Unequal access to the media for opposition parties during the election campaigns in both republics and voter intimidation in Serbia were reported by the U.S. Congressional Commission on the Conference on Security and Cooperation in Europe (see *Report on the U.S. Helsinki Delegation Visit to Hungary, Yugoslavia and Albania*, March 22-28, 1991, pp. 9-26); the National Republican Institute for International Affairs (see *The 1990 Elections in the Republics of Yugoslavia*, February 1991, pp. 7-34); and the U.S. State Department (see statement released by spokeswoman Margaret Tutwiler, May 24, 1991).

³⁶ See Chuck Sudetic, "Yugoslavia Perplexed Over Status of Aid," *The New York Times*, May 21, 1991.

³⁷ Step Two of the CSCE Human Dimension Mechanism stipulates that any participating state can ask that bilateral meetings with other participating states be held to discuss questions relating to the human dimension of the CSCE. (See *Concluding Document of the Vienna 1986 Meeting of Representatives of the Participating States of the Conference on Security and Co-operation in Europe*, "Human Dimension of the CSCE (2)," January 15, 1989.)

U.S. investment in Serbia. The Administration claimed that aid was restored because the Nickles amendment was doing little to hurt Serbian President Milosevic, at whom the sanctions were directed. Rather, the Administration contended, the Nickles amendment was destabilizing the federal government of Prime Minister Ante Markovic, which the United States supported. The Bush Administration claimed that Prime Minister Markovic was in the best position to encourage respect for human rights and democratic development. While Markovic's moderate political platform may have been appealing in theory to the United States, the Markovic government in fact had no control over the human rights practices of the individual republics.

Helsinki Watch believes that the Administration was wrong to restore aid. First, the aim of the Nickles amendment was to make U.S. aid contingent upon the development of multiparty democracy and respect for human rights in Yugoslavia. By placing the U.S. interest in supporting Markovic ahead of human rights concerns, the United States placed political interests above the intent of the amendment. Second, the aid was restored after only a twenty-day suspension — not enough time for the sanctions to affect the Serbian government. Finally, the amendment by its terms could be waived only if the president certified that Yugoslavia was "making significant strides toward" compliance with the Helsinki accords. By invoking the certification mechanism, the Bush Administration ignored the legal requirements of the amendment. Helsinki Watch believes that Yugoslavia was not complying with its obligations under the Helsinki accords nor was it making "significant strides toward" compliance, particularly in Kosovo, and that such certification was not justifiable.

Moreover, Section 116 of the Foreign Assistance Act provides that governments engaged in a consistent pattern of gross violations of human rights should be denied economic assistance except basic humanitarian aid. Ordinarily, it suffices to apply this law to an abusive national government, but in light of the diminished *de facto* significance of the federal government in Yugoslavia it is critical also to apply it to abusive security forces and republican governments. Particular offenders are the Serbian government in Kosovo and Serbian insurgents and the Yugoslav army in Croatia, all of which are responsible for gross abuses of human rights and humanitarian law.

In July, although the Administration denied that it was shifting its position toward Yugoslavia, it abandoned its earlier insistence on a single,

unified Yugoslav state.³⁸ It said that it would support independence for secessionist-minded republics if achieved peacefully,³⁹ while calling for an end to the use of force by the federal military.

At an extraordinary meeting of the U.N. Security Council on September 25, at which the United Nations imposed an arms embargo on Yugoslavia, Secretary Baker took the long overdue stand that the Serbian government and the federal military were responsible for the bloodshed in Croatia. While stating that the U.S. appreciated Serbian concerns about the disintegration of Yugoslavia, the secretary asserted that the U.S. "cannot and will not accept repression and the use of force in the name of those concerns." Moreover, Baker accused the federal military of "causing deaths to the citizens it is constitutionally supposed to protect."⁴⁰

In the past, the United States opposed the suspension of aid to Yugoslavia or its constituent republics on the grounds that sanctions would undermine the federal government and inevitably lead to Yugoslavia's dissolution. Given the drastic course of events in recent months, the Bush Administration followed the EC's lead and imposed sanctions against Yugoslavia in November. Helsinki Watch welcomes the imposition of sanctions and urges that they be directed at the Serbian

³⁸ For an example of the earlier policy of favoring unity, see State Department regular briefing, October 19, 1990, reaffirmed in State Department statements of January 25 and May 24, 1991, by spokeswoman Margaret Tutwiler (expressing "support for the interrelated objectives of democracy, dialogue, human rights, market reform and unity.") See also testimony of James Dobbins, deputy assistant secretary of state for European and Canadian affairs, before the Senate Subcommittee on European Affairs, February 21, 1991; and testimony by Secretary of State James Baker before the House Foreign Affairs Committee, February 6, 1991, and the Senate Foreign Relations Committee, February 6-7, 1991.

³⁹ See "U.S. Shifts Stance, Backs Yugoslav Break-Up if Peaceful," Reuters, July 2, 1991; and remarks by Secretary Baker during a photo opportunity at the State Department, July 2, 1991, as reported in the State Department's *Dispatch*, July 8, 1991.

⁴⁰ The United States also condemned the federal Yugoslav military and the Serbian leadership on September 23 during the CSCE Conference on the Human Dimension in Moscow. See plenary statement by Ambassador Max Kampelman.

government and the Yugoslav army, which is using its military might against civilians. However, for economic sanctions to be thoroughly effective, Yugoslavia's non-European Community members must also agree to impose similar sanctions against the Yugoslav armed forces and the Serbian government. Helsinki Watch also welcomes the cessation of Yugoslavia's participation in the International Military Education Training program and the suspension of OPIC for Serbia in May.

In addition, the United States should pressure the Croatian government to take concrete steps to ensure that minority rights are respected and that those guilty of violating those rights are brought to justice. Furthermore, Helsinki Watch calls upon the U.S. government to take a more active role in condemning human rights violations, especially the summary execution of civilians, not only from the U.S. Embassy in Belgrade, but also from the White House and the State Department in Washington. Such U.S. leadership would signal that gross abuses of human rights will not be tolerated as a way of resolving historical grievances, ethnic disputes and territorial claims.

Various members of the U.S. Congress, some acting in response to ethnic constituencies in their home districts, have taken an interest in Yugoslavia and brought considerable publicity to human rights issues, particularly in Kosovo. In recent months, both chambers of Congress have passed several resolutions condemning the use of force to resolve political differences within Yugoslavia.

The human rights efforts of the U.S. ambassador to Yugoslavia, Warren Zimmermann, and the record of the United States Embassy and Consulate continue to be exemplary. Ambassador Zimmermann has condemned all parties guilty of human rights abuses in Yugoslavia. He and his staff made frequent trips throughout the country, including to conflicted areas in Croatia and Kosovo. During such visits they spoke not only to government officials but also to opposition leaders, human rights activists, labor groups and media figures. Human rights concerns and evidence of abuses have been brought to the attention of relevant authorities in Yugoslavia both publicly and privately. Ambassador Zimmermann and the U.S. consul general in Zagreb, Michael Einik, have reported cases of human rights violations against Serbs in Croatia to Croatian President Tudjman. Ambassador Zimmermann also has expressed concern to President Momir Bulatovic of Montenegro about discriminatory measures taken against independent journalists in that republic. The ambassador continues strongly to urge Serbian President Milosevic to correct the grave denial of basic civil rights to ethnic

Albanians in Kosovo.

The Embassy's U.S. Information Service (USIS) office has worked to strengthen democratic institutions and human rights in Yugoslavia. During the past year, USIS has supported efforts by the International Media Fund to assist independent media in Yugoslavia, sponsored programs on constitutional development and ethnic conflict resolution, and offered International Visitor grants to independent journalists and opposition figures, including several from Kosovo.

The Work of Helsinki Watch

In an effort to expand its monitoring of the human rights situation in Yugoslavia, Helsinki Watch maintained a staff member in the country throughout 1991. The staff representative investigated human rights abuses and sustained contacts with human rights activists, government officials and members of the press throughout Yugoslavia.

In addition, Helsinki Watch conducted six missions to Yugoslavia in 1991. On the basis of a mission in March, Helsinki Watch released a newsletter, "Yugoslavia: The March 1991 Demonstrations in Belgrade," which criticized the Serbian government for its excessive use of force during demonstrations in Belgrade in which two were killed and scores were injured.

In June, Helsinki Watch sent a mission to all the republics and provinces in Yugoslavia to investigate press freedoms. A report, *Freedom of the Press in Yugoslavia: 1990-1991*, was released in December. The report chronicled the increase in nationalist sentiments in the press, government control of the media and harassment of journalists.

In February, August and December, Helsinki Watch sent missions to investigate the status of the Serbian minority in Croatia and to document human rights and humanitarian law abuses in the armed conflict. The missions visited Serbia, Bosnia-Herzegovina and Croatia. Mission participants spoke to human rights activists and lawyers, displaced persons, Serbian insurgents, Croatian officials, prisoners held by both sides, victims of abuse, and hostages held under house arrest in the village of Tenja. On the official level, the missions met on three occasions with Stipe Mesic, president of the Presidency of Yugoslavia, as well as with two deputy interior ministers of Croatia, public prosecutors in various districts throughout Croatia, Serbian insurgent commanders and Serbian political figures in Belgrade and Croatia. A September newsletter, "Yugoslavia:

Human Rights Abuses in the Croatian Conflict," and a report to be released in January 1992 document violations by the Serbian insurgents, the Yugoslav army and Croatian security forces.

In December, Helsinki Watch sent a mission to Kosovo to investigate human rights abuses by Serbian officials against the Albanian population. A report documenting the mission's findings will be released in early 1992.

Helsinki Watch also wrote letters of protest and public appeals in an effort to draw attention to human rights abuses in Yugoslavia. In February, a letter was sent to then Yugoslav President Borisav Jovic expressing concern about the forcible repatriation of Albanian escapees from Albania, given the substantial risk of persecution at the time if returned. In March, Helsinki Watch sent a letter to Serbian President Milosevic condemning the use of excessive force by Serbian police against demonstrators in Belgrade. In July, a public appeal condemned the excessive and unlawful use of force by the Yugoslav army against civilians in Slovenia and Croatia.

Helsinki Watch also testified before the Senate Subcommittee on European Relations, on February 21. In its testimony, Helsinki Watch voiced concern about excessive use of force by both Serbian and Croatian authorities, the treatment of asylum seekers and refugees in Yugoslavia, and the Serbian government's hostile treatment of international human rights monitors in Kosovo in 1990.

MIDDLE EAST WATCH OVERVIEW

Human Rights Developments

Nineteen ninety-one was a tumultuous year for the Middle East. The six-week Persian Gulf war, pitting Iraq against a twenty-eight-nation alliance led by the United States, traumatized the entire region. Neighboring states became bitter enemies; old alliances were rent asunder; peoples were set against their governments. In its wake, the original adversaries, Iraq and Kuwait, reverted to their old patterns of recriminatory bloodletting. Iraqi President Saddam Hussein suppressed a serious challenge to his rule by armed Kurdish and Shi'a Muslim insurgents with great ruthlessness, while Sheikh Jaber al-Sabah condoned a settling of scores with Kuwait's once-large foreign population.

When the war halted on February 27, only one clear-cut accomplishment had been achieved: Iraq had been compelled to reverse its forcible acquisition of Kuwait, and the government of the Sabah royal family had been restored to power. President Bush proclaimed this military victory a triumph of the "New World Order" that he has espoused. The rule of law as a guiding principle for international relations had been upheld, he claimed, and the world community had shown rare unanimity in acting in concert, rebuffing a bully whose ambitions were beginning to alarm even the most ardent supporters of pan-Arabism.

In terms of human rights, however, the war and its aftermath were a disaster. The only mitigating aspect was the precedent set by the United Nations Security Council resolution authorizing military intervention by Western forces in northern Iraq, to provide for the basic needs of displaced Kurds and protect the 3.5 million-strong minority from further slaughter at the hands of vengeful government troops.

With the passage of this resolution, the long-standing principle of nonintervention in another nation's internal affairs, used by abusive governments around the world to protect their human rights record from external scrutiny, was breached. In the following months, the U.N. resolution and the allied military shield covering Kurds and other Iraqis living north of the thirty-sixth parallel provided a unique opportunity for human rights workers, and the Kurds themselves, to investigate the

extent of the Iraqi government's past repression. The evidence is still being gathered, but at the time this report went to press it appeared that mass killings during Baghdad's campaign in the 1980s to depopulate the Kurdish countryside were far more extensive and systematic than had been previously estimated.

Grave abuses of the Fourth Geneva Convention, covering the treatment of civilians in occupied territory, were a norm of Iraqi behavior in Kuwait from the beginning of the occupation in August 1990. When war broke out on January 17, 1991, with massive allied bombardment of Iraqi targets, the Kuwaitis and foreigners living under occupation faced a renewed round of repression, including summary extrajudicial executions, arbitrary detention, torture, and the pillage of public and private property. In a last-minute bid to seize bargaining chips before the ground war began, Iraqi occupation forces rounded up about two thousand Kuwaiti men and transported them back across the international border to Iraq. They joined an estimated eight thousand other prisoners-of-war and civilian detainees seized from Kuwait throughout the crisis.

As defeat became inevitable, Iraqi forces retreating from Kuwait indulged in a final orgy of wanton destruction and looting. Most cataclysmic were the 735 oil fires, which cost the returning Kuwaiti government many billions of dollars in lost revenue and caused an environmental disaster.

During the air war, public rhetoric by the United States and its allies as to their strict adherence to the rules of war, and a carefully stage-managed television presentation of the conflict, was contradicted by evidence discovered on the ground by journalists and human rights groups, including Middle East Watch. Up to one-third of the estimated 2,500 to 3,000 Iraqi civilians killed as a direct result of the bombing raids were the victims of the allies' failures to take all required precautions to avoid civilian casualties.

On the Iraqi side, Saddam Hussein's decision to target major Israeli and Saudi population centers for attacks with modified Scud missiles was in clear violation of the laws of war. Other Iraqi violations of the Geneva Conventions included the mistreatment of Kuwaiti and allied prisoners of war, and the failure to provide access to them by the International Committee of the Red Cross.

During the course of the air war in January and February, Middle East Watch had noted a range of human rights violations committed by regional allies of the United States, in response to actual or anticipated

public reactions to the conflict in the Gulf. The Israeli-occupied West Bank and Gaza Strip were placed under round-the-clock curfew for most of six weeks, creating considerable personal suffering and economic hardship. The Egyptian authorities arrested students and other political activists opposed to the Gulf war. Morocco banned several rallies and meetings planned by war opponents. Syria detained scores of lawyers, intellectuals and other citizens who opposed President Hafez al-Asad's decision to dispatch troops to the warfront. Saudi Arabia and other Gulf states expelled hundreds of Palestinian residents, with little or no due process, as collective punishment for the Palestine Liberation Organization's decision to side with Iraq.

Even model democracies such as the United Kingdom and Denmark were guilty in 1991 of violating the rights under international law of some of their Arab residents. After the war broke out, fifty-four Iraqis and Palestinians were detained by British authorities and ordered deported without due process; another thirty-five Iraqi students were seized as prisoners-of-war on dubious grounds. In all, nearly 170 Arabs of various nationalities were served with deportation orders by the United Kingdom between August 1990 and February 1991. During the fall of 1991, the Danish government moved to deport to Lebanon 125 Palestinians who had been given temporary refuge, despite fears that they would be in danger of arrest by the Lebanese or Syrian authorities on their return.

On the Kuwaiti government's reckoning, 2,100 of its detainees were still unaccounted for at the end of 1991, and were believed still being held by Iraq. In fact, the real number of missing former Kuwait residents is probably substantially higher; the government's figure was cynically reduced to eliminate those long-term residents of Kuwait, such as Palestinians and the stateless Bedoons, whom Kuwait is refusing to take back. The refusal to accept responsibility for these people derives from the grand restructuring of pre-war Kuwaiti society now underway, the goals of which are to create a majority of Kuwaiti citizens in as short a period as possible and to force out virtually all Palestinians, who are collectively considered to be politically unreliable because of the sympathy they are alleged to have shown for Saddam Hussein. By the end of 1991, Kuwait's pre-war Palestinian population of about 350,000 had been reduced by nearly eighty percent, through a mixture of deportations, economic pressure, a refusal to renew work permits, and a ban on the reentry into Kuwait of the many Palestinians who fled to safety elsewhere during the war. Tens of thousands of persons have in the process been forced to abandon their lifetime's savings.

Bearing most of the burden of the Kuwaiti policy was Jordan, adding further economic and social strain to that already impoverished country. Despite the enormous pressures generated by the Gulf war and the rise of a militant strain of Islamic fundamentalism during 1991, King Hussein stuck to the program of political liberalization that he initiated two years earlier. At times, however, such as during the October Madrid peace conference, in which Jordan participated, the government took a firm line against public dissent, banning rallies and arresting activists. Press freedoms have also been curbed occasionally when they conflicted with government foreign policy concerns. But the process of establishing a parliamentary democracy, under a monarch who retains sweeping powers, appears to be making progress.

In contrast, as of the year end, promises made during the heat of the crisis by several conservative Arabian Peninsula states to introduce limited forms of popular participation in government, such as consultative assemblies, had not been met. Oman did form an advisory assembly chosen by Sultan Qabus, but neither Saudi Arabia nor Qatar made good on pledges to follow suit. Nor did Bahrain revive its suspended National Assembly, as it had said it would. Led by Saudi Arabia, the big brother of the Peninsula, it and the smaller Gulf sheikhdoms reverted to type within months of the end of the war, restricting access by foreign journalists and rights monitoring organizations and cracking down on their own people's freedoms. Arrests of suspected Shi'a dissidents are reported with disturbing regularity from Bahrain. Saudi Arabia resumed its practice of public executions of persons who were often victims of serious due process violations, including confessions induced by torture and incommunicado detention, then sentenced without having had the right to defense counsel.

More in the public spotlight than its fellow members of the six-nation Gulf Cooperation Council, the Kuwaiti government eventually bowed to pressure from its own people and abroad, and announced that parliamentary elections would be held in October 1992. Based on the country's 1962 Constitution, with its limited male franchise for only "first-class Kuwaiti citizens," the election campaign is bound to revive the pre-war arguments over the need for greater political participation and for a lifting of current restrictions on assembly, association and expression.

On December 26, 1991, Algeria was also due to hold the first round of national legislative elections. Postponed from earlier in the year, after what the authorities claimed was an attempt by the leading opposition party, the Islamic Salvation Front (FIS) to create chaos and seize power

by force, the eyes of much of the Arab world were focused on the Algerian elections. After decades of single-party rule, over forty parties have been permitted to register. Press freedom has flourished and lively public meetings and rallies are reported to have been a feature of the electoral campaign. Following the arrest of its top two leaders in late June during FIS-fomented disturbances that led to the imposition of martial law, thousands of the party's supporters were also rounded up. By the end of the year, most had been released, while FIS leaders Madani and Belhadj were still being held pending a trial that was due to begin in January.

The Maghreb region of North Africa, of which Algeria forms a part, saw some of the most significant improvements in regional human rights conditions during the year. Morocco took several important steps. These were the release of Abraham Serfaty, one of the longest serving political prisoners in the world; the announced closure of the notorious Tazmamart military prison and release of some of its inmates; the lifting of the eighteen-year confinement without charge of the family of the late General Oufkir, a former defense minister allegedly implicated in a failed coup against King Hassan; the release of hundreds of secretly held Sahrawi prisoners; and a promised reform of *garde a vue*, or incommunicado, detention under which many abuses of detainees' rights take place. While welcoming these overdue changes, Middle East Watch remained concerned about the qualified aspect of each of these steps.

During 1991, Egypt moved to reassert its traditional role as the heart, and center, of the Arab world. President Hosni Mubarak's forthright military and diplomatic support for the allied effort against Iraq was crucial to this endeavor. The Arab League returned to Cairo, its former headquarters, from Tunis, while the former Egyptian foreign minister, Esmat Abd al-Meguid, was appointed its secretary general. Egypt suffered financially as a consequence of the Gulf crisis, largely because of the loss of repatriated earnings of hundreds of thousands of expatriate workers and the need to accommodate them again at home. But it also reaped a huge windfall, with the cancellation of billions of dollars of debt owed to the West and to the rich oil states of the Arabian Peninsula. Egypt remains the second largest recipient of U.S. aid worldwide, after Israel.

However, Egypt's enhanced stature in the region made little difference to the Mubarak government during 1991 when it came to the treatment of its own citizens. A state of emergency, in force continuously since the assassination of President Anwar Sadat in 1981, remains in

effect, granting wide powers of arrest and detention to security forces, even though the justification for its retention appears problematic. Fringe groups of armed Islamists who receive aid from abroad are a thorn in the side of the authorities; the government also expresses concern at times about the alleged activities in Egypt of dissident Palestinians. But the scale of the threat appears out of proportion to the measures being used against them. One of the most noxious features of the system is the apparently pervasive use of torture in detention. According to the independent Egyptian Organization of Human Rights (EOHR), torture of suspected criminals in police lock-ups is routine, while convincing evidence exists of the systematic use of torture against suspected political dissidents by the State Security Intelligence (SSI) force. The continued use of torture by the SSI contradicts a pledge made by Interior Minister Abdel-Halim Moussa on taking over from his sacked predecessor, Zaki Badr, in late 1989.

The inescapable impression gained is that President Mubarak prefers to retain the reserve powers in the state of emergency as a means of guarding against popular discontent with government policies — and protecting his own seat. Theoretically a multiparty democracy, Egypt in reality is controlled by the ruling National Democratic Party; several parties, such as the Muslim Brotherhood, continue to be barred from open political activities while freedom of association remains subject to arbitrary interference from above. In 1991, the leading women's organization in the Arab world, the Cairo-based Arab Women's Solidarity Association, was told by the government to close down, and its assets were ordered transferred to an obscure Islamic women's group. The EOHR itself continues to operate in the shadows of the law because of the government's failure to grant it legal recognition.

In late 1991, Egypt's traditional rival for leadership of the Arab world, Syria, began to show unmistakable signs of recognizing that it would have to begin relaxing political controls at home or face a potential popular revolt on the lines of those seen in Eastern Europe. Coinciding with the start of his third decade in power, President Asad over a period of several months ordered the release of an estimated five thousand prisoners detained for their political or religious beliefs. Many were Palestinians or members of the banned Muslim Brotherhood and Party of Communist Action. Others were activists in professional associations who had been jailed a decade earlier for pressing for the rule of law and greater respect for the constitution in Syria.

The suddenness and scale of these releases surprised most observers; there had been no hint beforehand that they were in the offing. What this opening up of the jails confirmed was the frequent charges of human rights groups abroad, including Middle East Watch, that Syria held large numbers of political prisoners. Several thousand persons detained for political reasons, including some who have been in jail for over twenty years without trial and others whose sentences have expired, are believed to remain in custody. Moreover, on initial information it appears that none of the releases were from the secret detention facilities maintained by Syrian Military Intelligence in those parts of Lebanon controlled by the Syrian army.

In November, President Asad easily secured another seven-year term in office, to commence in March 1992, through the endorsement of his sole candidacy by the People's Assembly and then a popular referendum in which he was said to have gained over 99.9 percent of the vote. The legal and political niceties of his own position ensured, the president moved in the last months of the year to open up the political system below himself to a wider range of views. The ruling National Progressive Front, dominated by his Baathist Party, was said to be preparing to open its ranks to a number of other minor parties.

Like President Asad in Syria, the Iranian government of President Ali Akbar Hashemi-Rafsanjani has felt the need to respond to the changed international climate on human rights. A number of positive developments have taken place over the two-and-a-half years since the death of Ayatollah Ruhollah Khomeini, Iran's revolutionary leader. Among these are a modest relaxation on public dress, particularly by women; on sports and other forms of entertainment; and on the censorship of the print media. Iran today possesses a thriving artistic life and a large, and varied, print media. During 1991, the Iranian Parliament passed a bill providing for the right of defendants to legal counsel in all courts, including the Islamic revolutionary tribunals. Conditions of detention for a number of long-term prisoners held for their political beliefs were improved.

Other prisoners, such as most of those detained during 1990 from the opposition Freedom Movement and the Association for the Defense of Freedom and the Sovereignty of the Iranian Nation, a civil rights body, were released. On the other hand, nine prominent dissidents, some of them elderly and in frail health, were sentenced to jail terms of up to three years after closed-door trials in which they were denied legal counsel and after credible reports of torture. The case was in flagrant

contradiction of the assurances given earlier to the United Nations by Ayatollah Yazdi, head of the judiciary, about procedural reforms; and it revealed the extent of the Rafsanjani government's unwillingness, or inability, to control the parallel revolutionary institutions still powerful in the country.

All forms of expression in Iran continue to operate under an absolute prohibition against the promotion of what may be deemed secular behavior or the denigration of Islam and the political concept of the rule of the clergy. In other important respects as well, the government's record shows no sign of improvement, despite President Rafsanjani's evident eagerness to convince the West that Iran has put its atrocious past record behind it.

There remains a *de facto* ban on political pluralism, not to mention a climate of fear of the all-pervasive Intelligence Ministry that discourages most forms of apolitical association. Discrimination against minorities, though less than in the past, persists. And large numbers of executions continue to be carried out, sometimes in barbaric fashion, such as by stoning to death. In the first seven months of the year, nearly seven hundred executions were announced in the Iranian press, triple the rate in the same period of 1990; most are attributed officially to drug trafficking crimes.

Social discontent, stirred by difficult economic conditions and more than a decade of heavy-handed repression, was a feature of the past year in Iran. Popular demonstrations were reported in major cities, including Tehran, Isfahan, Zanzan and Rasht. These were quickly suppressed and exemplary punishments meted out. Although the unpopular Revolutionary Guards, or Pasderan, have officially been merged into the army or municipal police forces, Iranians say that they retain an autonomy of action in practice as guardians of the Islamic revolution. Harassment of citizens in their cars or in their homes, if suspected of Islamic transgressions such as possessing alcohol or illicit mixing the sexes, also persists. Given this background, the conduct of the parliamentary elections scheduled for April 1992, in which President Rafsanjani is aiming to eliminate his radical opponents, will be an important signal of the future direction of Iranian society.

A concerted offensive by Iran to secure the lifting of monitoring of its human rights record by the United Nations and the country's reacceptance into community of nations gathered momentum during 1991. One part of this campaign consisted of working to persuade its surrogates in Lebanon to release all their Western hostages. This effort

was crowned with the freeing on December 4 of Terry Anderson, the last American hostage. The two Germans still in captivity as this report was completed were being held by a small Lebanese group with no ties to Tehran. A related aspect was Iran's release from imprisonment without trial of British journalist Roger Cooper.

On the diplomatic field, Iran was also assiduous. A move to secure the lifting by the Human Rights Commission of the eight-year mandate of Reynaldo Galindo-Pohl, the U.N. special representative investigating Iran's rights record, very nearly succeeded in February. Coming at the height of the Gulf war, it was apparent that the West was reluctant to disturb Iran's professed neutrality by pressing it hard on its domestic affairs. Battle over the U.N. mandate will be joined again in Geneva in February 1992. However, given the government's record, as well as its continued equivocation over access by the International Committee of the Red Cross to Iranian prisons and over visits to the country by nongovernmental human rights organizations, the outcome of that debate is not certain.

The two-faced character of Iran's rights behavior was best illustrated by its policy abroad. Working to end the Lebanon hostage crisis so as to shed its terrorist-nation label, Iran is believed responsible for the assassination in Paris, in August 1991, of former Iranian Prime Minister Shahpour Bakhtiar. Nor was there any move by Iran to rescind the death sentence imposed by Ayatollah Khomeini on British author Salman Rushdie over his book *Satanic Verses*, as well as on all those associated with the book in any form. During the year, unknown persons killed the book's Japanese translator and seriously wounded its Italian translator.

Over the past year, Israel's human rights record in the territories it captured during the June 1967 war continued to be shaped by the four-year Palestinian uprising, or intifada. The intifada lost steam in 1991, and that, coupled with a change in tactics by Israeli troops, led to a decline in fatal casualties among Palestinians. Counterbalancing this improvement, however, there was a distinct increase in various forms of collective punishment such as movement restrictions. As noted above, during the six-week Gulf war the occupied territories endured the most severe curfew of the entire intifada, with far-reaching economic consequences. Tighter restrictions on movement to and from annexed East Jerusalem, the *de facto* capital of the West Bank, between the West Bank and Gaza Strip, and into Israel, for work or other purposes, were retained after the war. New controls on workers entering Israel, ostensibly on security grounds, had a particularly severe effect on the Gazan economy.

A disturbing feature of the past year was an increase in the number of "collaborator killings" of Palestinians. In most months, deaths of Palestinians at the hands of their kinfolk exceeded those committed by Israelis. Despite some efforts to curtail the violence, Palestinian leaders have failed to condemn unequivocally the killing of suspected collaborators.

The ability of the Israeli system to investigate itself while failing to come to any meaningful conclusions or to exercise accountability was on display in striking fashion during 1991. After an official inquiry into the October 1990 incident at the Jerusalem sanctuary known as the Temple Mount, or Haram al-Sharif, ended in a whitewash, a judicial investigation produced a much more balanced report into the causes of the seventeen Palestinian deaths. But Judge Kama's inquiry failed to press for the prosecution of those suspected of unlawful killings, and there the matter was dropped.

The Right to Monitor

A growing number of countries in the Middle East and North Africa grudgingly tolerate the activities of domestic human rights organizations, but only a handful of states have gone so far as to grant official recognition and protection under the law to them. The Cairo-based Arab Organization for Human Rights (AOHR) now includes eight national chapters that operate independently of their governments. These are found in Egypt, Yemen, Mauritania, Jordan, Kuwait, Morocco, Algeria and Tunisia. In addition, genuine human rights organizations exist clandestinely in Syria, Lebanon and Bahrain; to declare their existence openly would almost certainly lead to their closure and the arrest of their members. Each of the latter maintains offices in Europe or the United States. Self-proclaimed human rights organizations exist in a number of other regional states, such as Libya and Iran, but these are not believed to have any real independence from their governments.

No rights monitoring activity has ever been tolerated in government-controlled regions of Iraq. Those who have attempted to complain about the security forces' actions or to protest any aspect of President Saddam Hussein's rule have usually paid a heavy price. In the second half of 1991, a fledgling Kurdish human rights organization was established in the rebel-controlled city of Erbil, but its independence from the principal guerrilla factions and the nature of its work could not be verified. Outside

Iraq, a number of human rights bodies affiliated to Shi'a opposition parties document abuses primarily against their own communities; these predate the Gulf crisis. In the wake of the war, several more organizations have also been formed in the West. For instance, a German-based international human rights organization dealing with Kurds regionwide was established in September.

Also in September, the Iranian government organized an unprecedented human rights conference, attended by representatives from many Western and Muslim countries. Middle East Watch was among those invited. The event was flawed by the government's insistence on treating it as an academic exercise in reconciling Islamic and Western attitudes toward the principles of human rights, independent of actual practices. Attempts by Middle East Watch to carry out a mission to examine Iran's own record, originally scheduled for fall 1990, were unsuccessful. However, Iran did permit missions by Middle East Watch and other Western organizations, such as Amnesty International, to visit the country during the spring to interview Iraqi refugees. In December, U.N. Special Representative Galindo-Pohl was also able to make a brief visit to Iran, after a number of delays that may have been attributable to the detailed strength of the report he had submitted to the U.N. Human Rights Commission in February. The success of this latest mission was unknown at the time of writing.

Iran does not permit local human rights monitoring. The one indigenous organization is concerned almost exclusively with countering the propaganda abroad of the regime's principal opponents, the Baghdad-based People's Mujaheddin of Iran, and is thought to be sponsored by the government. In addition, Tehran houses an Iraqi Shi'a human rights association documenting abuses committed by Baghdad. When a civil rights offshoot of the liberal Freedom Movement, a small political party associated with former Prime Minister Mehdi Bazargan, was created three years ago, the authorities moved quickly to suppress its activities and jail many of its members.

In Israel, human rights monitoring by a variety of local and foreign organizations is a well established practice. Often aiding their work is the strength of the local media in exposing abuses of authority. However, these plaudits need to be qualified. Organizations such as al-Haq, the West Bank affiliate of the International Commission of Jurists, and the Palestine Human Rights Information Campaign face numerous obstacles in carrying out their work. Among these are the arrest of field workers and restrictions on movement when investigating suspected violations.

The Egyptian government's refusal to grant legal recognition to the EOHR and the arrest and torture in 1991 of Dr. Mohamad Mandour, a member of its board of trustees, illustrates the limits of domestic human rights monitoring. Both the AOHR and the Arab Lawyers Union, which has been active in protesting abuses, are based in Cairo; however, perhaps out of concern for their host's sensibilities, they have done little work on Egypt itself. (The AOHR carried out a mission to Kuwait in the fall, to observe the government's treatment of non-Kuwaitis.) Egypt permits foreign rights organizations to conduct investigative missions on its soil; but it has yet to permit access to its prisons, its official protests that international standards are met notwithstanding.

The part of the region where local human rights organizations are strongest established is in the three Maghreb countries of Tunisia, Algeria and Morocco. However, several of these organizations are closely associated with political parties and others have been coopted into government-controlled human rights advisory councils.

Despite its recent advances in other rights-related areas, Morocco places frequent roadblocks in the way of visits by foreign organizations. Amnesty International is effectively barred from entering the country, while Middle East Watch has yet to receive an official response to its many requests over the past two years to send a mission and meet with Moroccan officials.

U.S. Policy

The most disturbing feature of the West's approach to human rights issues in the Middle East during 1991 was the frequent subjection of human rights to what were considered to be the higher imperatives of foreign policy. In the interests of maintaining the wartime alliance, the alliance chose to overlook violations committed by its friends while excoriating those for which Iraq was responsible.

Likewise, in the build-up to the Middle East peace conference which opened in Madrid in late October, it was evident that the United States was soft-peddalling human rights issues so as not to antagonize potential participants. The issue of human rights was not placed on the agenda of the peace conference, for any of its planned three phases. Nor was any reference made to the matter by U.S. officials during formal speeches or at press conferences. The contrast with the prominence Washington gives to issues of political pluralism and core freedoms in other parts of the

world where it is hoping to induce political change is striking.

One somewhat distasteful conclusion is that the United States patronisingly regards the Middle East as "not being ready for democracy," or that Arabs and Iranians do not appreciate the value of individual liberties and protection from the arbitrary actions of their governments. To put it another way, the underlying argument appears to be that the "strongman" type of ruler fading into the history books elsewhere in the world is the best guarantor of stability, and U.S. interests, in the Middle East. Until it was politically convenient to do so, in the case of Iraq last February, the United States never played an active role at the U.N. Human Rights Commission at Geneva in promoting the investigation of the record of Middle Eastern governments.

When British and American investigators brought their long inquiry into responsibility for the bombing of Pan Am 103 over Lockerbie, Scotland, to a conclusion in October, 1991, indicting two Libyans, the relief in certain quarters was almost palpable. Once again, Colonel Muammar Qadhafi, the West's favorite whipping boy, could be the scapegoat for an outrage, the ultimate mastermind of which may well be elsewhere. Strong evidence also linking the bombing to the Iranian government and to the Syrian-backed Popular Front for the Liberation of Palestine - General Command faction headed by Ahmed Jibril seemed to be brushed aside.

Most denunciations of Israeli practices have centered on the building of Jewish settlements in the occupied territories, which the Administration made clear it regarded as "an obstacle to peace." The most notable development during the year in this key relationship was President Bush's decision to hold up for 120 days an Israeli request for \$10 billion in loan guarantees to help resettle Soviet Jews. It remains to be seen whether that blocking action will be renewed in January, when the delay period expires, if there is little progress at the peace table and settlement activity continues.

In the view of Middle East Watch, much closer linkage should be created between the provision of financial assistance by the United States, other Western countries and multilateral lending institutions and respect for human rights by the recipient country. Israel, as the largest aid recipient worldwide, can be faulted on grounds of prolonged arbitrary detention and torture as a perpetrator of gross abuses of human rights; but so, too, can other regional U.S. allies such as Egypt and Turkey that also receive large sums every year. If the key requirements of the Foreign Assistance Act were honestly matched against the record of these three

countries, all would be in danger of losing their allowance from the U.S. taxpayer.

The Work of Middle East Watch

Inevitably, Middle East Watch's work in 1991 was heavily skewed toward Iraq and occupied Kuwait, the Gulf war itself, and the aftermath of the war in Iraq and Kuwait, where major human rights violations took place. Allocation of resources to these crises meant that ongoing work elsewhere was either temporarily shelved or slowed down.

In cataloguing Iraq's human rights record during the year, Middle East Watch sent a total of seven missions abroad, much of the time interviewing refugees. In February, a researcher spent three weeks in Jordan interviewing foreign workers fleeing Iraq; in March, a mission to Kuwait divided its time between documenting Iraqi atrocities during the occupation and ongoing Kuwaiti abuses against suspected collaborators; in April a joint mission with the U.S. Committee for Refugees spent a similar period on the Iran/Iraq border, talking to those Kurds and Shi'a who had escaped the brutal repression that followed the failed uprising; in June, researchers went to Britain and Israel, to meet Iraqi exiles and to examine Scud attacks against the Jewish state; in September, a land-mines expert entered northern Iraq clandestinely to study the use of this weapon against civilians; and, finally, in December, a joint mission with Physicians for Human Rights traveled to Iraqi Kurdistan to look into numerous discoveries of mass graves of suspected victims of security forces.

While part of this extensive research work is still being prepared for publication, a report entitled *Victory Turned Sour* was published on Kuwaiti violations in the post-liberation period, and a major, four-hundred-page volume was issued on the air war in the Gulf. Under the title of *Needless Deaths: Civilian Casualties in the Gulf War*, the report provided an extensive analysis of the two sides' conformity with international law governing the aerial bombardment of Iraq and the Iraqi missile attacks on its neighbors. The report also examined discrepancies between the claimed scrupulousness of the allies in avoiding civilian casualties and the actual record on the ground. In conjunction with Physicians for Human Rights, research was also carried out into the nature and effect of U.N.-imposed trade sanctions against Iraq, particularly with respect to the availability of food and medicine for civilians.

Newsletters were issued on the bombing of the Ameriyya air raid shelter in Baghdad, in which two to three hundred civilians died; the treatment of prisoners-of-war and sick and wounded combatants by both sides; Britain's detention of dozens of Iraqis and Palestinians, either as prisoners-of-war or pending deportation; and Israel's misuse of an extended curfew over the occupied territories. An article was published in *The New York Review of Books* in May on Kuwait's last forty-eight hours under Iraqi occupation. Opinion pieces were also published in *The New York Times* on post-liberation abuses in Kuwait.

Two books arising out of the Gulf War intended for commercial publication were begun during 1991. The first will cover the gamut of human rights violations in Iraq and the region as a result of the war; the second will present an historical and social overview of the Kurdish people throughout the region, in the form of text and photographs. Much research time was devoted to both projects during the latter half of the year. The Kurds' book forms part of a series of initiatives by Middle East Watch to promote greater public awareness of the mistreatment of this people, the largest ethnic group in the region without its own homeland.

In the case of Morocco, short newsletters were issued on the expulsion of a prominent Moroccan writer from France and on the denial of permission to travel abroad to former prisoners of conscience. Regular contact was also maintained during the year with officials and local human rights organizations in Tunisia and Algeria.

A report on prison conditions in Israel and the occupied territories was published in February, following a mission the previous year. The report noted the exceptionally high incarceration rate of the Palestinian population of the West Bank and Gaza Strip, as well as the sharp discrepancy between conditions in Israel Prison Service-run detention facilities and those run by the army. A series of newsletters also addressed different human rights aspects of the occupation, continuing the themes of excessive force and accountability that had been the hallmark of Middle East Watch's work on Israel over the previous two years.

Work on Egypt in 1991 consisted of a number of protests to the Mubarak government over specific rights violations, as well as a focus on the closure of the Arab Women's Solidarity Association. Two newsletters were issued on the subject, highlighting the inequities of the case. Efforts were made to coordinate pressure to reverse the decision through other channels, including Human Rights Watch's Women's Rights Project and an amicus brief presented to Egypt's State Council Court, which is hearing AWSA's challenge of the dissolution order.

In mid-summer, following indications that a long-standing impasse blocking a resolution of the Lebanon hostage crisis appeared to be breaking, Middle East Watch worked to assist that process, often in conjunction with the New York-based Committee to Protect Journalists. Among other things, an opinion article was published on the issue in *The New York Times*, and a brief newsletter was released in December on the unfinished business remaining in Lebanon after the release of the Western hostages.

Denmark's threat to deport approximately 125 Palestinians who had sought refuge there from Lebanon, fearing arrest at the hands of either the Lebanese or Syrian security forces, also prompted interventions by Middle East Watch. Part of a regular theme during the year of addressing European governments guilty of rights violations against Arab residents, two lengthy protest letters were dispatched to the Danish government in support of the Palestinians' request for asylum.

The convening by the United States and Soviet Union in late October of a Middle East peace conference, with its opening sessions in Madrid, presented Middle East Watch with the challenge of putting rights issues onto the agenda. With barely a week's notice after the announcement that the conference would definitely be held, a report on the human rights record of six principal regional participants — Israel, Egypt, Jordan, Syria, Lebanon and the Palestinians — was put together. The report was released at a press conference in Madrid, on the eve of the inauguration of the peace conference itself. For the next week, two Middle East Watch staffers engaged in an intensive effort to speak directly to the different delegations and to brief some of the five thousands journalists attending this event.

EGYPT

Human Rights Developments

A state of emergency has been in force in Egypt almost continuously for over twenty-four years. The broad powers of detention that it affords has led to tens of thousands of arbitrary arrests and the related

widespread practice of torture.¹

Parliament, dominated by the ruling National Democratic Party, voted in May to uphold a presidential decree extending Egypt's emergency law for three more years. President Hosni Mubarak called for the vote without notifying legislators in advance that the item would be on the agenda, preempting a nascent campaign to challenge renewal of the law.

The need to thwart terrorism, prevent assassinations, and control drug trafficking are justifications offered by the government for the continuation of the state of emergency. For example, Prime Minister Atef Sedki asserted that there were "countries that wanted to export their terrorist plots to Egypt after the contemptible occupation of Kuwait."² However, government critics contend that President Mubarak's latest extension of the emergency law is really part of a strategy for keeping a lid on political dissent, particularly protests over price increases mandated by Egypt's economic restructuring plan. The use of the emergency law during the Gulf war — and its subsequent application to "profiteers" who might, as the government put it, "exploit" price increases caused by economic restructuring³ — represent not only an extension of the law's scope, but its apparent institutionalization in Egypt.

In April, leaders of four legal political parties — al-Wafd, Labor, Liberal and the National Progressive Unionist Grouping — sent a memorandum to President Mubarak arguing that the law "was originally introduced for special and limited exceptional cases, as stipulated in the Constitution and the law. The legislators' aim was not for that law to turn into a permanent law that obstructs ordinary laws introduced to protect citizens' freedom and security." They stressed that the institutionalization of the emergency law was incompatible with human rights guarantees: "No state in the world has lived under an emergency law for ten years

¹ Emergency powers are defined in Law 162 of 1958, as amended (the Emergency Law), explained below, and Law 105 of 1980, which permits the detention of persons accused of security offenses outlined in the Penal Code.

² "Egypt: Emergency Law Extended Three More Years," *Mideast Mirror*, May 9, 1991.

³ Some five hundred "profiteering merchants" were reportedly placed under administrative detention in the first week of May.

while its government continued to claim adherence to democracy and veneration of human rights."⁴ Egypt's opposition political parties in 1991 continued to push, unsuccessfully, for reform measures. At a press conference in July, ten parties demanded "genuine democracy" in Egypt and proposed that a constituent assembly draft a new constitution and put it to a national referendum.⁵ Among the guiding principles proposed were: respect for human rights and civil liberties, press and publication freedom, freedom to form political parties, restrictions on the application of the emergency law, and judicial supervision of elections.

Mass arrests, warrantless arrests, and administrative detention were all used by the Egyptian authorities in 1991. During the Gulf war, the authorities sent strong signals that the public expression of anti-war views would not be tolerated. Journalists, opposition activists, intellectuals, students and Islamists were targeted for arrest and detention. In most cases, the detainees were charged with preparing leaflets for distribution or preparing to incite disturbances harmful to the security of the state. Most were released without charge in March during a Ramadan amnesty announced by the government. Examples of those detained include the following:

- o On January 23, Dr. Mohammed Abdel Latif and his assistant, Dr. Abdel Rahman El-Bana, were arrested in Cairo, apparently because Latif's company had taken out an advertisement publicizing statements against the war by several professional associations. Latif had been arrested in 1989 and tortured, and there were fears that he would again be a torture victim. The Egyptian government denied that torture had been used and released Latif on February 7.
- o Magdi Hussein, head of the youth organization of the Islamist Socialist Labor Party (SLP) and deputy chief executive of the SLP's weekly newspaper *al-Sha'b (The People)* was arrested after giving a

⁴ *Al-Wafd*, April 8, 1991, as reported in Federal Broadcast Information Service (FBIS), April 16, 1991.

⁵ The parties were: al-Wafd, the Labor Party, the National Progressive Unionist Grouping, the Liberal Party, the technically illegal Muslim Brotherhood, the Arab Socialist Party, the Green Party, the Democratic Unionist Party, Ummah, and Misr al-Fatah.

January 25 sermon at a Cairo mosque in which he criticized both the Iraqi invasion of Kuwait and the Gulf war. A former member of the Egyptian Parliament, Hussein was charged with inciting unrest and criticizing the government. According to Amnesty International (AI), Hussein was brought before a prosecutor who ordered him kept in custody for fifteen days. He was released on February 25.⁶

- o On January 30, Adel Hussein, editor-in-chief of *al-Sha'b*, and Huda Makkawi, one of the newspaper's journalists, were arrested on the charge of insulting the Egyptian armed forces and revealing military secrets. They allegedly wrote articles urging an Egyptian disengagement from the multinational forces in Saudi Arabia which disclosed U.S. use of Egyptian airfields without prior military approval. Hussein and Makkawi faced a military tribunal on February 6, but were acquitted and released on February 14.
- o On February 8, the Cairo-based Egyptian Organization for Human Rights (EOHR) reported a series of early-morning arrests of some twenty-two student leaders. In addition to the students, the government arrested computer scientist Adel el-Mashad, general secretary of the Committee for Defense of National Culture (CDNC). The CDNC is an intellectual forum that produced, under Mashad, an "alternative" to the semi-official press version of the war.⁷ Mashad was charged with incitement of hatred for the Egyptian system of government and shedding doubt on the Egyptian armed forces at the front. The charges were reportedly based on a CDNC printed statement about the Gulf war and a handwritten draft of an appeal to world intellectuals that the CDNC was planning to issue. CDNC had sponsored an anti-war conference on February 1 at Cairo University and had been subjected to a raid of its indoor, peaceful,

⁶ Hussein was charged under Articles 80 and 102 of the Penal Code, which prohibit spreading false or tendentious information in time of war that could damage war preparations or operations, provoke panic or alarm among people, or put public security or the public interest at risk.

⁷ "Cairo Cracks Down on Anti-War Activists," *Mideast Mirror*, February 7, 1991.

regular meeting of February 3.⁸

On February 9, in a clear warning to student activists, Interior Minister Abdel Halim Moussa said: "Universities are a place for science and learning and not for political activity. We will take action strongly and firmly against anyone who tries to cause unrest or block the learning process." Midterm university holidays were extended for two weeks, in an apparent attempt to thwart anti-war protests. Nevertheless, protests broke out at several universities when classes resumed.

After the beginning of the ground war in Iraq on February 24, Cairo police used tear gas to disperse peaceful anti-war protesters at Cairo University, and then closed the university, which had recently reopened for the spring term.⁹ Large-scale demonstrations were also held on February 15 at 'Ayn Shams University and the Delta area universities at Mansoura and Damietta. The largest anti-war protests at the universities occurred in the last five days of February, when the police shot four dead and injured dozens.

Most students detained during the war were released in the Ramadan amnesty of early March. However, nearly twenty of the roughly five hundred arrested Cairo University students were excluded from the amnesty.

The government's use of its extraordinary powers to preempt or suppress dissent was again affirmed in October when security forces detained opponents of the Madrid Peace Conference. On November 1, EOHR reported that Egyptian security forces had detained over two hundred anti-conference protesters. Most were Islamists, especially members of the technically illegal Muslim Brotherhood. The previous day, Interior Minister Moussa acknowledged that sixty-seven people were in detention for producing or possessing anti-conference leaflets.

⁸ "Mubarak Confident Calls for 'War Footing' as Opposition Organizes," *Mideast Mirror*, February 4, 1991.

⁹ The Interior Ministry estimated that on February 25 as many as eight thousand students attempted to march into the streets near Cairo University to protest the Gulf war, a prohibited act under the state of emergency. The security forces stormed university buildings to quell the demonstration. The clash marked the first time that security forces used tear gas on student protesters since student uprisings in 1972 and 1973.

The State of Emergency provides the government three detention options. First, the Emergency Law allows for administrative detention without charge or trial, pursuant to a detention order issued by an officer of the Ministry of Interior. Under such an order a detainee can be held for up to ninety days even if the order is ultimately ruled invalid.¹⁰ Second, the Emergency Law provides for the arrest of persons suspected of involvement in any one of numerous security offenses contained in the Penal Code and the Emergency Law itself. Using this procedure, a detainee may be held up to sixty days on an order that ultimately is determined to be invalid.¹¹

¹⁰ A detainee has no right to petition a court to contest his detention for thirty days from the date of the order. Thereafter, a petition may be heard, not in regular courts, but in (Emergency) Supreme State Security Courts, which have up to fifteen days to rule. If the court orders the detainee's release, the Ministry of the Interior may object to the order within fifteen days. Objection by the Ministry of Interior requires that the petition be transferred to a similar court within fifteen days of the date of objection. The second (Emergency) Supreme State Court has an additional fifteen days to make a final determination of the validity of the petition. A detainee improperly detained in the judiciary's determination can, therefore, be imprisoned for ninety days. If either court determines the petition to be inadequate, the detainee must wait thirty days to begin the cycle again. Human rights monitors report that detainees are sometimes held without legal justification, even after the second (Emergency) Supreme State Court has ordered their release.

AI has reported that obtaining release on petition is made more difficult by Ministry of Interior practices. Detention orders, for example, are not always delivered to detainees and detainees are often denied access to lawyers, hampering attempts to present successful petitions. Even when the orders are communicated to detainees, they are often delivered orally or are so ambiguous that they provide little guidance for the preparation of a petition.

¹¹ The state security prosecutor may authorize the arrest of a security offense suspect for thirty days. The suspect may immediately petition the (Emergency) State Security Court for release, but the court has thirty days to rule, the Ministry of Interior has fifteen days to object and send the case to a second (Emergency) State Security Court, and that second court has another fifteen days to rule. If the petition is rejected by either court, the detainee must wait thirty days to submit a new petition.

A final state-of-emergency detention option is provided by security provisions of the Criminal Procedure Code. Under the security laws, the state security prosecutor may order the arrest of a security offense suspect for fifteen days. Sitting as a "judge of instruction," the prosecutor may automatically extend the detention for an additional forty-five days. A person suspected of involvement in a security offense may, therefore, be held up to sixty days before even being brought before a court.

Notwithstanding the prohibition against torture and the clear duty to prosecute torturers imposed by international and Egyptian law,¹² Egyptian security forces in 1991 continued to torture detainees with apparent impunity. In an October 1991 report, AI found the existence of "widespread [and unabated] torture of political detainees in Egypt."¹³ EOHR reported in August 1991 that there was a "total absence of safeguards for the prisoner while in detention in public prisons." For example, in the case of those accused of the October 1990 assassination of Parliament Speaker Dr. Rifaat al-Mahgoub, EOHR found that Egyptian laws prohibiting security-force access to prisoners without an official permit from the public prosecutor's office were openly flouted.¹⁴

[T]he SSI freely transferred the defendants from prison to the SSI headquarters [at Lazoughly] for torture in further violation of the law and the prosecution's decision to incarcerate them in officially designated "public prison." Although the prosecution was informed by the defendants that following each session of questioning by the prosecution they were being transferred to Lazoughly for more torture, it failed to take any action.

¹² Egypt acceded without reservation to the Convention against Torture on June 25, 1986. In addition, Article 126 of the Penal Code calls for three to ten years' imprisonment for acts of torture by public officials.

¹³ Amnesty International, *Egypt: Ten Years of Torture*, October 1991, p.2.

¹⁴ The assassination of al-Mahgoub, a leading member of the ruling National Democratic Party and a close associate of President Mubarak, led to widespread arrests of alleged Islamic militants. The radical clandestine Jihad Organization was blamed for the assassination, after a nationwide round-up of approximately three thousand Islamists.

In an earlier report, in May, EOHR stated that torture

has become a routine practice by the police and is not confined to a particular prison or to the state security intelligence center in Lazoughly. Torture also takes place in state security intelligence centers in the provinces, the only difference being the extent to which they are supplied with the necessary equipment.

The torture of a leading human rights monitor exhibits a disappointing indifference by Egyptian officials to international condemnation of the practice of torture. Dr. Muhammad Mandour, a member of the EOHR board of trustees, and Dr. Emad Adriss, his colleague at the Palestine Red Crescent hospital in Cairo, were arrested on February 8 and held first at the Lazoughly SSI headquarters and then at Abu Za'bal prison. On February 16, EOHR reported that for eight days Mandour and Adriss had not been permitted contact with either lawyers or their families and had been subjected to long hours of interrogation. Mandour, and possibly also Adriss, were denied adequate medical treatment and subjected to beatings, hanging from the wrists, and electric shocks. After EOHR representatives met Mandour in prison, the human rights organization reported visible signs of torture on his body. According to these representatives, Mandour said that his torturers had threatened his life if he revealed that he had been mistreated. Mandour was released without charges on February 23, while Adriss remained in detention until mid-April.

EOHR told Middle East Watch in September that lawyers affiliated with EOHR had submitted six separate complaints about Mandour's detention and torture to the public prosecutor but had yet to receive a reply. Rather than acknowledge the abuses and vow to punish those responsible, the Egyptian government, through its London Embassy, said that "investigations conducted by the competent authorities in Egypt proved that allegations that [Mandour was] subjected to torture or other forms of ill treatment were unfounded." The Embassy also stated more generally that "allegations that some detainees have been subjected to torture have no basis in truth....They are pure lies and rumors circulated with the intention of hindering security operations."¹⁵

¹⁵ Amnesty International, *Egypt: Ten Years of Torture*, October 1991, pp. 9, 13.

In another case, Afifi Mattar, a prominent Egyptian poet and opponent of the Gulf war, was arrested on March 2 and brought to Lazoughly for ten days. Blindfolded and handcuffed throughout, he was tortured with electric shocks, hanged from his wrists for long periods, and beaten with a solid instrument on his head and other parts of his body. "I was treated like an animal," he said after the ordeal. His interrogators sought to force him to confess to links with a Baathist organization. When he refused despite the torture, the SSI obtained an administrative detention order from the Ministry of Interior and brought him to Tora Reception Prison. He was released without charge on May 12.

EOHR reported in April 1991 that "the public prosecution has failed to respond to a number of its complaints regarding the torture of citizens, including the demand for their speedy submission to forensic medical examination before the signs of torture heal." For example, EOHR noted, Mandour was not given a forensic medical exam before or after his release from detention, despite his allegations of torture. Moreover, the provisions of the state of emergency that allow for periods of prolonged incommunicado detention facilitate torture by allowing time for visible signs of torture to disappear.

In 1991, as in past years, EOHR documented and publicized the torture of less prominent Egyptian detainees, but continued to be frustrated by the authorities' lack of response, with one notable exception. In November 1990, EOHR had brought an official complaint to the Egyptian public prosecutor concerning allegations of torture made by defendants held in connection with the assassination of Parliament Speaker al-Mahgoub. The defendants had alleged that at Lazoughly, in an effort to coerce them to confess, electric shocks were applied to sensitive parts of their bodies, including the genitals; they were beaten with whips and thick wooden sticks; they were forced to crawl extended distances; they were suspended by their wrists and feet for long periods; and they were forced to watch the mistreatment of their wives. In a welcome development in July, the State Security Court¹⁶ trying the

¹⁶ In addition to creating mechanisms and grounds for detention, the emergency laws create special judicial procedures for trying suspects for security-related crimes. Under the Emergency Law, the Security Law as amended by Law No. 103 of 1983, and Presidential Decree No. 1 of 1981, security-related trials are held before (Emergency) State Security Courts. The Emergency Law holds that "there shall be no appeal whatsoever" to a higher tribunal from an (Emergency)

Mahgoub case decided "to charge a member of the Court to investigate the evidence of the torture of the defendants." There has been no public indication of the outcome of this investigation.

In a report issued in August, EOHR examined conditions at four prisons in the Tora district, south of Cairo, and found "a policy in which torture and mistreatment are routine methods of discipline, punishment and the extraction of confessions." However, the report charged, most torture in the Cairo area takes place at SSI headquarters in Lazoughly. In addition to torture, EOHR reported that detainees are subject to long periods of interrogation, deprived of sufficient food and water, denied access to family and lawyers, and held without charge or apparent legal justification. EOHR noted that prisoners are removed "from their prison cells at night, and [transferred to Lazoughly], where they are submitted to repeated doses of torture, and returned to prison before dawn." Sometimes prisoners are kept at Lazoughly for several days. The report details several cases of torture at Lazoughly, providing further documentation of the long-standing belief that the SSI headquarters serves as a major torture center in Egypt.

The Egyptian authorities' use of deadly force against unarmed protesters and in clashes with Islamists became a matter of increasing concern in 1991. In early February, the security chief of Beni Suef, in Upper Egypt, General Mohsen Haroun Sarhan, warned that "strict orders" had been issued to the police to "open fire on anyone trying to undermine security." He explained that "[a]ny illegal behavior will be met with appropriate deterrent measures. There will be no leniency during the current delicate security climate because of the Gulf war."¹⁷ On February 25 and 27, responding to the most widespread student demonstrations in Egypt since January 1973, security forces shot plastic and live bullets, aimed above the waist, at anti-war protesters during

State Security Court. However, (Emergency) State Security Court verdicts are not considered final until ratified by the president of the republic, who may decide to revoke the judgment and order a retrial by a court of the same standing.

¹⁷ As quoted in *al-Hayat* (the London-based Lebanese daily) and reported in "Police Ordered to Get Tough After Anti-War Protest Sparks Violence in Upper Egypt," *Mideast Mirror*, February 19, 1991.

clashes at Cairo University, killing four students and injuring dozens.¹⁸ In July, security forces shot two men, killing one, as they rode a motorbike against the traffic on the street where Interior Minister Abdel Halim Moussa has a home. The pair were apparently innocent victims, having made a wrong turn, but were evidently suspected of planning an attack on the minister's home.

The government's campaign against Islamists continued to focus on the Jihad Organization, a radical clandestine Islamist group alleged to have been involved in the 1981 assassination of President Sadat, the 1990 Mahgoub assassination and other violent activities.¹⁹ On June 8, Jihad member Yasir Abdal Hakim Umar, who was wanted in connection with the Mahgoub assassination, was killed in a security-force ambush; another suspect was injured.²⁰ On June 26, 'Abd-al-Ghani 'Abd-al-Gakim, said to be the leader of the Jihad Organization in Beni Suef, was killed when members of his organization clashed with security forces. Authorities claimed that 'Abd-al-Gakim had been killed when members of his group rioted, threw stones and shot at security forces, causing security forces to return fire. Ten people were arrested in the incident and firearms and other assorted weapons were seized.

¹⁸ EOHR, in a "demand for an investigation into the repression of peaceful student demonstrations," reported:

[B]ombs were fired with great intensity at the university campus, the university residence and even into the students' rooms....Buckshot and plastic bullets were fired into the university campus and residence from outside....Shooting was horizontal, with the result that the bulk of the injuries were in the upper half of the body...[O]ne student was hit in the eye.

¹⁹ On May 31, 'Ali al-Buhayri, leader of the Alexandria branch of the Jihad Organization, reportedly admitted assisting fellow members in assassinating al-Mahgoub. According to the Interior Ministry, al-Buhayri also confessed to aiding three others in the murder of Mishah Idris, a secret policeman who was reportedly assassinated at the organization's order. On May 25, in Beni Suef, security forces arrested another Jihad member, Ashraf Abdal Wahhab, allegedly while attempting to throw an explosive at a security-force building.

²⁰ See State-run Cairo MENA, "Police Kill al-Jihad Member, Arrest Another, June 8, 1991, as reported in FBIS, June 10, 1991.

Freedom of association continues to be limited in Egypt. While the Egyptian Constitution describes Egypt's political system as "a multiparty one" and sets forth the right of all citizens to seek public office, Egypt's political arena is not open to all competing ideologies. The Egyptian law regulating political parties requires that prospective parties apply for legal status to a committee dominated by appointees of President Mubarak's ruling National Democratic Party. Legal status continues to be denied to the Muslim Brotherhood, the Nasserists and the Communists. Members of these groups are barred from running for office under their party affiliations.

In the case of private voluntary organizations, a 1964 law grants the Ministry of Social Affairs broad powers to reject an organization's application to become legally registered with the government. Groups that have been denied legal status under this law include the independent EOHR and the Arab Thought Forum, a prominent group headquartered in Amman, Jordan, which is concerned with regional economic, social and cultural issues. EOHR's petition to challenge the constitutionality of the law before the Constitutional Court was rejected in November 1991.

For those private organizations that are legally registered, the law grants the Ministry of Social Affairs sweeping powers of control, including the right to appoint government representatives to the board of directors, to call board meetings, to appoint temporary boards of directors, or to dissolve organizations completely. In June, the Cairo-based Arab Women's Solidarity Association (AWSA), a prominent women's rights group, was ordered dissolved by a tersely worded administrative decree that did not provide substantive reasons for this extreme measure. The AWSA assets were ordered transferred to another organization, Women in Islam. Legally registered with the government since 1985, AWSA also holds consultative status with the U.N. Economic and Social Council. AWSA petitioned the Egyptian State Council Court, a three-judge administrative panel, to void the dissolution order. At the first session of the proceeding, on October 31, the Ministry of Social Affairs defended the dissolution order by complaining about AWSA's "dissemination of ideas running counter to the position of the State" and its sponsorship of a September 1990 conference on women and journalism, which "took a stand against the official and public stand of the government with regard

to the invasion of Kuwait by Iraq.²¹ The second court session was held on December 5, when AWSA's lawyers responded to the Ministry's allegations. The next session is scheduled for February 20, 1992.

In a September 1991 interview, President Mubarak characterized freedom of expression as "an established right" and admitted that "[s]uppressing opinions is very harmful." However, in the same interview he contradicted himself by describing the broad criteria that could be used to "limit of freedom of expression [in] matters concerning Egypt's interests and reputation."²²

While religious minorities are usually not directly persecuted by the government, the arrest of three converts from Islam to Christianity — Mustafa al-Sharqawi, Mohammed Sallam and Hassan Mohammed — suggests the limits of religious freedom in Egypt. The three men were arrested in September and October 1990 and charged under Article 98(f) of the Penal Code, which prohibits exploitation of religion, propagation of extremist religious thought, and placing national unity and social peace at risk. Egyptian officials said that the men were being held "to protect social peace and national unity." On March 27, 1991, the Egyptian security court extended their detention for forty-five days. The three were released in July, but the criminal charges against them were not then dropped.

The detention of these men — a clear restraint on freedom of religion — highlights a sensitive area for a government that otherwise tolerates non-Muslim beliefs, despite presiding over an overwhelmingly Muslim country with a vocal fundamentalist community. Long an opponent of

²¹ In testimony to Middle East Watch, AWSA's president, Dr. Nawal El-Saadawi, said that the conference participants had discussed a wide range of issues, including the Gulf crisis. Participants at the conference voiced opposition both to Iraq's invasion of Kuwait and to foreign intervention in the region, advocating an approach based on diplomacy and negotiation, rather than military force and war. Dr. El-Saadawi told Middle East Watch that in November 1990 AWSA received a letter from the director-general of the Ministry of Social Affairs, reminding the organization that under the 1964 associations law it was prohibited from discussing anything related to politics or religion. See Middle East Watch, "Egyptian Government Moves to Dissolve Prominent Women's Organization," September 1991.

²² Mufid Fawzi, *Sabah al-Khayr*, September 19, 1991, as reported in FBIS, September 25, 1991.

extreme Muslim fundamentalism, the Egyptian government has remained sensitive to conversion because of the recurrent threat of Muslim-Christian strife. For this and other reasons, Coptic Christians, who comprise about ten percent of Egypt's fifty-five million people, have raised charges that security forces are reluctant to react to Muslim attacks on Coptic churches and property.

In February, Islamists protesting the arrest of leaders of an anti-war protest in Beni Suef began a riot that turned sectarian when Coptic businesses were burned. In September, sectarian strife, usually confined to Upper Egypt, spilled into Cairo when a local dispute led to clashes in the Imbaba section of the city over a four-day period; two Coptic churches and dozens of Christian-owned businesses were targeted by Islamist militants who took to the streets with knives, swords and chains in response to a rumor that a Copt had murdered an Islamist. The attacks in September were preceded in August by violent attacks on Copts celebrating the Feast of the Virgin Mary, in which hundreds of Islamists brandishing sticks, metal rods and swords descended on Imbaba and defaced religious portraits, ripped crosses off Christian women, and wrecked shops owned by Christians. One priest was quoted as saying, "We kept calling the authorities and they did nothing." It was not until the nonfatal shooting by a Christian merchant of a Muslim customer in late September that the authorities brought in police protection for the Coptic community.²³

Egypt's Palestinian community has suffered increasing discrimination. Since the beginning of the Gulf crisis in August 1990, long-term Palestinian residents of Egypt reportedly have been denied reentry to Egypt after routine trips abroad, and Palestinian students at Egyptian universities have been deported.²⁴ The above-mentioned detention of Drs. Mandour and Adriss, linked to their work at the Palestine Red Crescent Hospital, was accompanied by the arrest of up to seventy-five Palestinians in early February.

In June, the government withdrew the right of Palestinians to own farmland. The deputy prime minister and minister of agriculture and

²³ Chris Hedges, "A Religious War Rends a Cairo Slum," *The New York Times*, October 22, 1991.

²⁴ Mitchell Hartman, "Palestinians in Egypt Suffer in Silence," *Middle East International*, February 8, 1991.

land reclamation, Dr. Yusuf Wali, approved the reclamation of approximately 2,600 acres of state lands from a number of Palestinian residents — the latest step in a steadily increasing squeeze on Palestinians. While a 1963 law banning foreigners from owning land in Egypt exempted Palestinians, the preferential treatment was dropped in 1985. Palestinians were given a five-year grace period to sell their land.

Stateless Palestinians holding only Egyptian travel documents who remained in Kuwait after the expulsion of Iraqi forces at the end of February — a community which numbered eighteen to twenty thousand in October — were typically unable to obtain visas to enter Egypt, the administering power in the Gaza Strip at the time they or their families left for the Gulf. Although Egyptian authorities have publicly stated that the government does not distinguish between Palestinians and Egyptians, these Palestinians were, except in rare cases (wives of Egyptian men), unsuccessful in gaining access to Egypt as they were expelled from or fled Kuwait.²⁵

Palestinian detainees charged with conspiracy to commit terrorist acts were excluded from the Ramadan amnesty that freed many of the anti-war protesters detained by the government. EOHR reported in September than 101 Palestinians were being held without charge in Abu Za'bal prison.²⁶

The Right to Monitor

The Egyptian government permits international human rights monitors to visit the country and does not interfere with their work. However, to date the government has denied access to prisons to Middle East Watch, Amnesty International and the U.N. Human Rights Center's Special Procedures Unit. The EOHR operates freely from its Cairo office but the group has been denied official legal status. EOHR reported in May that three other human rights organizations — in Giza, Cairo and Alexandria — have received legal recognition from the Ministry of Social

²⁵ See Middle East Watch, "Nowhere to Go: The Tragedy of the Remaining Palestinian Families in Kuwait," October 23, 1991.

²⁶ "L'OEDH Appelle a la Liberation D'une Certaine de Palestiniens Detenus En Egypte," Agence France-Presse, September 9, 1991.

Affairs but that "the first suspended its activities fifteen years ago and the other two confine themselves to cultural activities." EOHR also noted the existence of a center for human rights study and research at Cairo University and a human rights association at Asyut University.

Restrictions on Egyptian rights monitors are an issue of increasing concern since the November 22, 1991 detention of human rights lawyer Negad El-Bore'i. El-Bore'i, who was traveling to Kuwait as a member of an EOHR fact-finding mission, reported to EOHR that he was detained in the Cairo airport and questioned for one-and-one-half hours by SSI officers. The officers forced him to leave behind reports, some of them from Middle East Watch, detailing human rights violations in Kuwait since its liberation from Iraqi occupiers. Upon his return to Cairo on November 26, El-Bore'i was again detained for one-and-one-half hours, but none of his papers was confiscated.

U.S. Policy

Egypt is a key regional ally of the United States and one of the top four recipients of U.S. foreign aid — second to Israel but ahead of Turkey and Greece. Regrettably, Egypt's human rights record, including a pattern of torture of detainees held in prisons, police stations and SSI detention centers, continues to escape serious public scrutiny by the Bush Administration and Congress. Despite significant U.S. leverage, and the opportunities presented by frequent high-level meetings between Egyptian and U.S. officials in 1991, the Bush Administration refrained from any public expression of concern about human rights violations in Egypt. To the contrary, Egypt received massive debt write-offs and other U.S. and international financial assistance to strengthen its shaky economy. No human rights improvements were required of President Mubarak in return for this assistance. This unconditioned aid was widely viewed as a reward for Egypt's contributions to U.S. policy in the Middle East, including its unqualified support for the U.S.-led alliance against Iraq, its contribution of 36,000 troops to Operation Desert Storm, and its support of U.S. efforts to organize a Middle East peace conference.

While the State Department's most recent worldwide human rights report demonstrates the Administration's awareness of significant violations of human rights in Egypt, the Bush Administration in 1991 avoided any further public mention of these issues in the pursuit of its broader foreign policy goals. The Administration appears to have traded

Egypt's support for U.S. foreign policy in return not only for massive financial assistance but also for Egypt's *de facto* immunity from U.S. public pressure to improve its human rights record.

Post-war U.S.-Egyptian relations were dominated by Secretary of State James Baker's attempts to orchestrate a Middle East peace conference. The Bush Administration's indebtedness to President Mubarak for assisting the process was expressed by Secretary Baker in his October 14 remarks in Cairo to Mubarak: "I don't think anybody has been any more helpful and forward leaning with respect to the efforts all of us have made to create a peace process than have you, in many, many ways."

Another Administration priority that eclipsed human rights concerns was Egypt's pursuit of economic reform. In March, Secretary Baker expressed the Administration's support for Egypt's economic reforms: "The U.S. is frankly very encouraged by and appreciative of the efforts the Government of Egypt is making in the reform of its economy." Baker then pledged U.S. support for Egypt's appeal to the World Bank and International Monetary Fund (IMF) for debt restructuring.

On one occasion, the U.S. Embassy in Kuwait, attempting to curb Kuwaiti government abuses against non-Kuwaitis, protested that government's practices. One charge by the Embassy, according to *The Washington Post*, was that "Egyptian security officers were helping Kuwaiti security police interrogate and in some cases torture detainees."²⁷ But, as noted, the Bush Administration's apparent willingness to reveal Egypt's role in human rights abuses in Kuwait did not translate into a single public statement about torture in Egypt.

The chapter on Egypt in the State Department's *Country Reports on Human Rights Practices in 1990*, released in February 1991, is fairly comprehensive in scope, describing a number of violations, but often failing to do so in its own voice. The report typically refers to "convincing reports" of human rights activists to describe key abuses, reserving its own voice to summarize and list only those violations that are widely acknowledged to exist. In the case of torture, the report also fails to reveal its prevalence.

At the beginning of 1991, Egypt was burdened with over \$55 billion in foreign debt to governments, commercial banks and private

²⁷ Caryle Murphy, "Kuwait Reported Moving to Curb Rights Abuses," *The Washington Post*, October 2, 1991.

institutions, with approximately \$12 billion owed to the United States. In November 1990, the "Paris Club" consortium of creditor nations rejected an Egyptian request to refinance its debt, demanding prior "liberalization" of Egypt's economy. In February 1991, however, at the height of the Gulf war, the United States announced that it would write off Egypt's \$6.7 billion debt for foreign military sales.²⁸ The balance of Egypt's debt to the United States, some \$5 billion, is authorized to be paid over twenty years on favorable terms that include a four-year grace period and a heavily subsidized interest rate.²⁹ The U.S. action appeared to be a reward for Egypt's role during the Gulf crisis and its "Thousand-Day Plan," announced in late 1990, to liberalize its largely centralized economy. The six-nation Gulf Cooperation Council (GCC) joined the U.S. action, writing off over \$7 billion of additional debt.³⁰ Later, after Egypt agreed to implement an IMF economic program, the Paris Club agreed to forgive up to half of the \$20.2 billion that Egypt owed its member nations.

In bilateral aid, Egypt in fiscal year 1991 received an estimated \$1.3 billion in military assistance, \$815 million in Economic Support Funds, \$1.5 million for military training and \$150 million in food aid from the United States. Despite well-documented abuses in Egypt that are widespread, persistent and serious in nature, including torture, the Administration apparently does not consider aid to Egypt to be barred by Section 502B of the Foreign Assistance Act of 1961, as amended, which

²⁸ *The Washington Post* reported that President Bush, after a National Security Council meeting on August 29, approved the write-off of \$7.1 billion of Egypt's military debt to the United States. Administration officials told the *Post* that the president's move was based on Egypt's support for U.S. policy in the Gulf crisis. According to the *Post*, following the Iraqi invasion of Kuwait, Egypt extended to the United States overflight rights and staging and transit rights from Egyptian air bases, and smoothed the passage of dozens of U.S. warships through the Suez Canal. Patrick Tyler, "Bush to forgive \$7.1 Billion Egypt Owes for Military Aid," *The Washington Post*, September 1, 1990.

²⁹ "Agreement Reached with U.S. on Debt Repayment," *Cairo MENA*, July 19, 1991, as reported in FBIS, July 25, 1991.

³⁰ David Lennon, "Gulf Pay-off transforms Egypt's prospects," *Financial Times*, February 1, 1991. The GCC countries, including Kuwait and Saudi Arabia, were all part of the allied coalition against Iraq.

prohibits security assistance to any "country the government of which engages in a consistent pattern of gross violations of internationally recognized human rights." A State Department presentation to Congress on security assistance programs for fiscal year 1992 describes Egypt as a "guided democracy" that has "increasingly free political parties." Egypt's government, political parties, judiciary and press are described as "the most progressive of any Arab country with regard to human rights." The presentation argues that the "Peoples' Assembly has increased its authority," while the continued state of emergency is excused in a bland phrase: "[t]he government continues to use emergency law authority to prevent terrorism."

A March 1991 State Department report to Congress on recipients of the Foreign Military Financing program observes that most torture in Egypt is committed by the SSI and that the SSI reports to the Ministry of Interior. The report also notes that U.S. military assistance is not provided to any of the organizations that report to the Ministry of Interior, but to the Egyptian military, thus implicitly seeking to excuse the U.S. aid program. However, Section 502B does not permit funding to nonabusive elements of an abusive government, but bars all security assistance to any government engaged in a consistent pattern of gross violations of human rights. Although Section 502B allows the Administration, if it deems it necessary to provide aid to an abusive country, to explain to Congress "the extraordinary circumstances warranting provision of such assistance," neither the Bush Administration nor any previous Administration has submitted such a statement to Congress.

A similar willingness to ignore U.S. human rights law is reflected in the affirmative U.S. votes on three World Bank loans to Egypt in 1991. Section 701 of the International Financial Institutions Act of 1977 requires the Administration to

channel assistance toward countries other than those whose governments engage in...a pattern of gross violations of internationally recognized human rights, such as torture or cruel, inhumane, or degrading treatment or punishment, prolonged detention without charges, or other flagrant denial of life, liberty, and the security of a person.

The Administration is allowed to vote for assistance to such a country only if the assistance is designed to meet "basic human needs." Although

torture and prolonged detention without charge are well-documented and long-standing abuses in Egypt, the United States voted to approve all three loans, none of which was designated to meet basic human needs.³¹

The Work of Middle East Watch

In 1991, Middle East Watch monitored human rights developments in Egypt, maintaining close contact with the independent EOHR. During the Gulf War, Middle East Watch wrote twice to President Mubarak about human rights issues. A widely circulated February 11 letter protested the arrest of political activists, students, and others known or perceived by the authorities to be outspoken opponents of the war. The letter also raised concerns about the use of a military court to investigate and prosecute journalists from opposition publications.

A second letter, on February 21, expressed concern about the above-noted torture of Dr. Muhammad Mandour, a physician and member of EOHR's board of directors, while he was held in detention at SSI headquarters at Lazoughly. Middle East Watch urged President Mubarak to instruct the appropriate authorities to investigate the allegations of torture and asked to be kept informed about the investigation. In December, Human Rights Watch honored Dr. Mandour at its annual Human Rights Day event.

Middle East Watch met with El-Sayed Abdel Raouf El-Reedy, Egypt's ambassador to the United States, to raise concerns about the prospective deportation from Kuwait of long-term residents carrying Egyptian travel documents, and to urge the Mubarak government to shoulder its responsibilities in this respect. Earlier requests to visit Egyptian prisons,

³¹ The first loan, for \$300 million, is to support decentralization and restructuring of the economy. The second loan, for \$140 million, is to aid the establishment of a \$572.3 million social fund. The social fund is designed primarily to support labor-intensive public works projects that would improve the nation's infrastructure and provide employment during economic restructuring. It is intended also to create a safety net for displaced Egyptian workers, including those returning from Kuwait. The final loan, for \$84 million, is designed to support a \$285.5 million project to increase Egypt's use of natural gas resources, freeing more petroleum for export.

first made in 1990, were repeated at this meeting.

In August, Middle East Watch wrote to President Mubarak to protest the above-described administrative order dissolving the Arab Women's Solidarity Association, the Cairo-based women's rights organization which had been legally registered with the Ministry of Social Affairs. In September, Middle East Watch published a newsletter about the AWSA case, including an analysis of the much-criticized 1964 Associations Law governing the formation, regulation and dissolution of private organizations in Egypt. One of the purposes of the newsletter was to draw attention to the broad powers granted to the state under the Associations Law, and to generate a campaign of international support for AWSA in advance of the organization's challenge of the dissolution order before Egypt's State Council Court in proceedings that began on October 31. The Women's Rights Project of Human Rights Watch distributed the newsletter to its network of women's rights organizations in the United States and abroad.

In October, Middle East Watch and the Women's Rights Project joined the Urban Morgan Institute for Human Rights of the University of Cincinnati College of Law as *amicus curiae* in a brief submitted to the State Council Court. The brief argued that the dissolution of AWSA violated Egypt's obligations to protect the rights to freedom of association and expression guaranteed by the International Covenant on Civil and Political Rights, the African Charter on Human and Peoples' Rights, and the U.N. Convention on the Elimination of All Forms of Discrimination Against Women, all of which Egypt has ratified.

Also in October, Middle East Watch published a newsletter on the predicament of stateless Palestinians trapped in Kuwait, an estimated eighteen to twenty thousand of whom carry only Egyptian travel documents (*laissez-passers*) because they or their families left the Egyptian-administered Gaza Strip prior to the Israeli occupation that began after the June 1967 war. The newsletter included testimony from some of these Palestinians and their relatives about Egypt's denial of visas to them and their families. Without such documents, these Palestinians — who typically have not been permitted to return to their former public-sector jobs in Kuwait — and their children cannot resettle in Egypt.

Middle East Watch called on Egypt to state publicly its policy regarding the issuance of visas to this distinct group of stateless Palestinians and to provide information about the guidelines used by the Ministry of Interior to evaluate their applications for visas to Egypt.

IRAQ AND OCCUPIED KUWAIT³²

Human Rights Developments

Throughout 1991, Iraq was under an international public microscope. A welcome result of this process was increased public awareness of the deplorable state of human rights in the country, a seemingly impenetrable one-party state where, until its invasion of Kuwait in August 1990, rights abuses largely escaped sustained scrutiny and international opprobrium. Early in 1991, world attention was focused on the consequences of the Iraqi government's defiance of U.N. Security Council resolutions. Foremost among these were Resolution 660 of August 2, 1990, condemning Iraq's invasion of Kuwait and demanding the immediate withdrawal of Iraqi military forces, and Resolution 678 of November 29, 1990, authorizing the use of force after January 15, 1991 to end the Iraqi occupation.

When Saddam Hussein refused to quit Kuwait, the international military coalition assembled by the United States moved to enforce the U.N. resolutions: Operation Desert Storm began with a massive airborne assault on targets in Iraq during the early morning hours of January 17. U.S. and allied violations of the laws of war during this forty-three-day international armed conflict are discussed in the chapter on the United States; Iraqi violations are discussed in this chapter. The first section of this chapter provides an overview of human rights abuses in occupied Kuwait by Iraqi forces in January and February. It is followed by a discussion of human rights developments in Iraq, and concludes with an assessment of Iraq's missile attacks on Israel and Saudi Arabia during the Persian Gulf War.

³² By treating human rights abuses in occupied Kuwait in the chapter on Iraq, Middle East Watch in no sense condones the Iraqi invasion of August 2, 1990, or recognizes Iraq's annexation of Kuwait as the country's 19th province. Rather, placing the discussion here reflects Human Rights Watch's policy of addressing abuses according to the forces committing them rather than the geographic boundaries in which they occur. For a discussion of human rights developments in liberated Kuwait after February 1991, see the chapter on Kuwait.

Iraqi-Occupied Kuwait: January-February 1991

On January 2, 1991, the Iraqi occupation of Kuwait entered its sixth month. By that time, Iraq had completed its control over Kuwait; all institutions were by then run by Iraqi officers, including hospitals, colleges and the media. In the first two weeks of 1991, the Iraqi authorities continued their policy of appropriating Kuwaiti public property, but the start of the war on January 17 slowed this process. As Iraqi troops hastily retreated from Kuwait in the last week of February, they set on fire a number of government buildings, including the National Assembly and the Foreign Ministry, and a number of luxury hotels including the Holiday Inn, the Sheraton, and the seaside SAS Hotel.

During January and February, free expression and assembly in occupied Kuwait remained severely restricted. Kuwaiti television had ceased operation on the day of the Iraqi invasion and Kuwaiti radio was used to retransmit Baghdad radio programming. The only newspaper permitted to publish was *al-Nida' (the Call)*, the occupiers' mouthpiece, which was produced using the requisitioned facilities of the pre-invasion Kuwaiti newspaper *al-Qabas (the Spark)*. On January 1, *al-Nida'* itself was suddenly shut down without any stated reason. A number of small publications were printed and clandestinely distributed, including *Sumoud al-Sha'ab (Steadfastness of the People)*.

The Iraqi occupying forces reacted ruthlessly to the growing threat of an allied attack after war was authorized by U.N. Security Council Resolution 678 of November 29, 1990. The Iraqi forces also reacted to violence blamed on the Kuwaiti resistance, including car bombs. For example, al-Farwaniyya Hospital records show that two patients, one of whom was an Iraqi, were treated for injuries they received when a bomb exploded on December 20 in a public market in the Hasawi district. On December 28, a car bomb exploded in the same market, killing four Iraqi soldiers and injuring twelve Iraqis and eighteen others, according to hospital records.

Summary executions increased during January and February, primarily in reaction to acts of armed resistance. Following a practice especially common during September and October 1990, Iraqi authorities ordered highly publicized executions of suspected resistance members. On January 12, 1991, Iraqi forces arrested Khaled al-Ahmed, 25, his brother Ahmed, 22, and his brother-in-law Abdel Rahman — all three former employees of Kuwaiti military or security forces. They were taken from

Khaled's home on suspicion of armed resistance, a charge their family did not question when interviewed by Middle East Watch. According to eyewitnesses interviewed by Middle East Watch, the bodies of the three were brought back and thrown in front of the family home on February 5; the three had just been executed and their bodies bore signs of torture.³³ Following another Iraqi practice, the family was told not to remove the bodies for several hours.

On January 14, Asrar al-Qabandi's just-executed and mutilated body was dumped in front of her family home. A Bahraini-born thirty-year-old woman, she was the most celebrated of Kuwait's women resistance figures. She had been detained since November 4 and accused of maintaining satellite-phone contact with the Kuwaiti government-in-exile and receiving large sums of money from that government to finance the resistance; neither charge was contested by her former comrades interviewed by Middle East Watch.

On January 17, at the start of the Desert Storm military operation, a member of the Kuwaiti resistance fired at Iraqi soldiers operating an anti-aircraft gun placed on top of a school building that was also being used as an Iraqi command post.³⁴ Iraqi forces retaliated against the entire block from which the shots were fired. All houses in Block Four, a low-income section of al-Rumaithiyya, a southern suburb of Kuwait City, were searched. The house in which the gunman had been hiding was methodically burned. In a second house that was also burned, five resistance fighters were killed in a shootout, according to neighbors.³⁵

Following the shootout, Iraqi forces arrested seven men who lived on Block Four. One of the seven arrested returned alive on February 20;

³³ Khaled had been shot in the forehead, Ahmed in the neck and Abdel Rahman several times in the chest, according to eyewitnesses.

³⁴ Neighbors gave the name of the gunman to Middle East Watch as Talal Mousa al-Bannai, but that could not be confirmed. They also reported that the school was equipped with four anti-aircraft artillery guns; the placements were still visible when Middle East Watch interviewed the witnesses on March 27, 1991.

³⁵ The house in which the shootout was reported to have taken place bore clear signs of a gun battle, with numerous bullet holes in the furniture, walls and windows of most rooms. The house appeared to have been set on fire deliberately, a common Iraqi practice for homes of suspected resistance members.

one, Nasser Hamza Ali, is missing; and the other five were killed in detention. Those killed were Walid al-Saleh, 30; Hamza Abbas, 22, and his brother, Amir, 21; and Hamza Muhammed Ali, 56, and his son-in-law, Ali ibn Nikhi, 29. On January 22, the bodies of the executed men were brought back to the neighborhood and left for two days in a visible place on the block before relatives were allowed to bury them. Witnesses told Middle East Watch that the bodies of two of the men bore clear signs of gruesome torture. The body of Ali ibn Nikhi, one of the murdered men, had one eye gouged and the fingernails of one hand extracted, according to Mas'ud Ali, a brother-in-law who claimed the body.

The exact number of those killed by Iraqi forces in January and February has yet to be determined.³⁶ Over 280 people are still missing after having been arrested or disappeared during that period. If a large number of the missing turn out to have been killed by Iraqi forces, the number of extrajudicial executions may prove to be higher than in previous months. But there is insufficient evidence to support the widely circulated reports by the Kuwaiti government-in-exile and repeated by U.S. officials that substantially larger numbers were executed in retaliation for the beginning of Desert Storm on January 17.³⁷

Arrests during January and February 1991 increased considerably, after a noticeable decline during November and December 1990. As one indication of this trend, registration records at the Kuwaiti Association to Defend War Victims show a more than two-fold increase of arrests in January over December. More than 180 of those arrested during January have yet to be accounted for. Those detained between January 1 and February 18, if they were not killed, met the same fate as other civilian detainees arrested since the beginning of the occupation. There are

³⁶ For other accounts of executions during this period see, Caryle Murphy, "Kuwaitis Resisted, Survived," *The Washington Post*, March 4, 1991.

³⁷ See, e.g., Edward Cody, "Exiled Kuwaiti Leaders Say Iraqis Kill, Steal for Food," *The Washington Post*, February 10, 1991; Victor Mallet, "Iraqis executed over 200 Kuwaitis," *Financial Times*, February 15, 1991; Caryle Murphy, "U.S. Says Iraq Stepping Up Terrorist Actions in Kuwait," *The Washington Post*, February, 24, 1991; Judith Miller, "Officials of Kuwaiti Government Move to Saudi City Nearer Home," *The New York Times*, February 25, 1991; Jimmy Burns, "Kuwaitis tell of 7,000 dead and Iraqi atrocities," *Financial Times*, February 20, 1991.

numerous reports from this period of prisoners being subjected to severe beating, electric shock and extraction of fingernails to force them to confess to crimes or provide information on resistance activity.

In February, Iraq started a large roundup of Kuwaitis, culminating in the arrest of around two thousand Kuwaiti males who were seized at random between February 19 and 23, during the last week before Iraq's hasty retreat from Kuwait.³⁸ Around one hundred of those arrested during February remain unaccounted for. The rest have been repatriated. Those seized during this roundup who have returned appear not to have been tortured. However, their places of detention were overcrowded and there was inadequate food and medical care, leading to at least one fatality.

During the entire Iraqi occupation of Kuwait, over ten thousand were either detained by Iraqi forces or disappeared and were believed detained. They include prisoners-of-war captured in the initial invasion of Kuwait as well as civilians detained throughout the seven-month occupation. Those captured were primarily Kuwaiti citizens and stateless Arab residents of Kuwait known as Bedoons, but included other residents of Kuwait as well. Most were deported to Iraq. In the case of civilian detainees, deportation is a clear violation of Article 48 of the Fourth Geneva Convention.³⁹

Until the end of the war, Iraq did not allow visits to the prisoners by the International Committee of the Red Cross (ICRC). Starting in the last months of 1990, family visits were allowed. In the case of the over six hundred Kuwaiti army officers detained in Ba'qouba, outside of Baghdad, treatment at the time improved considerably and family visits were thereafter allowed regularly. However, because of the long distance

³⁸ The February roundup was probably the largest in a single month since September 1990. But claims that in the last week of the occupation, up to forty thousand were rounded up were false. Such claims were circulated, shortly before the ground war, by Kuwaiti representatives and given currency by U.S. defense officials. See, e.g., Knut Royce, "Kuwaitis Next Human Shields?," *Newsday*, February 20, 1991; "Iraqi Forces Arrest 7,000 Kuwaiti Citizens," a dispatch by the Kuwaiti News Agency, February 25, 1991; "33,000 Koweitiens portés disparus," *Le Monde*, March 5, 1991. See also the transcript of General Norman Schwarzkopf's press conference on February 27, 1991.

³⁹ Iraq is a party to the Fourth Geneva Convention.

involved and the dangers of traversing the route between Kuwait and Baghdad once the air war began, few visitors were able to make the trip.

On January 21, CBS correspondent Bob Simon and three of his colleagues were captured by Iraqi forces near the Kuwaiti-Saudi border. They were subsequently taken to Baghdad where they were detained until March 2, when Iraq released them after a high-level international campaign to gain their release.⁴⁰

After the war, most of those known to have been in Iraqi custody were repatriated. Between March and September, 4,219 prisoners-of-war were repatriated from Iraq to Kuwait through the ICRC. The ICRC also arranged the repatriation of civilian detainees, including 935 in March. Also in March, Iraq repatriated directly to Kuwait 1,174 civilian detainees who had been rounded up in the last days of the occupation starting on February 19. Hundreds more managed to escape Iraqi prisons during the March uprising in southern Iraq, and returned on their own to Kuwait. But there are still many more unaccounted for.

The Iraqi and Kuwaiti governments have expressed opposing positions on the issue of the missing. On October 13, the Kuwaiti government issued a report and an updated list showing 2,101 missing persons believed to be in Iraqi custody. The list includes 1,587 Kuwaiti citizens, 354 Bedoons and 160 people of other nationalities; of these, 214 are women and 115 are children below the age of twelve. The list does not include more than one thousand names, mostly Bedoon, Jordanian and Palestinian former residents of Kuwait, that had been listed by relatives as missing.⁴¹

The Kuwaiti Association to Defend War Victims registered 1,182 missing persons as of September 7, 1991, the majority of whom are believed by the Association to be in Iraqi custody. This list includes 699 Kuwaiti citizens and 318 Bedoons.

⁴⁰ For example, Soviet President Mikhail Gorbachev was reported to have personally intervened to secure the release of the CBS team. See Eric Pace, "Baghdad Releases CBS News Crew," *The New York Times*, March 3, 1991.

⁴¹ The Kuwaiti government had earlier demanded the repatriation to Kuwait of those additional one thousand people. Starting in August, however, the government dropped the names of all missing Palestinian and Jordanian residents from its lists. It also deleted the names of Bedoons who were not affiliated with the military or the police.

There is extensive witness testimony that most of those on the Association's list were in fact detained by Iraq and that some of them were recently seen in Iraqi prisons. Despite this evidence, Iraq denies that it is holding any Kuwaitis against their will. It has so far rebuffed attempts by third parties to help in releasing known detainees and accounting for the missing. In an August 29, 1991 letter to the U.N. secretary general, Iraq's Foreign Minister Ahmed Hussein claimed that Iraq was not holding any detainees from Kuwait. He added that there were 3,389 Kuwaitis in Iraq whose repatriation is delayed by the Kuwaiti government's refusal to allow their return.

Under international law, Iraq is obligated to account for all those detained by its forces, by providing complete information to the ICRC and the families about the fate of those detained. While the omission from the Kuwaiti government's list of the names of over one thousand Bedoon, Jordanian and Palestinian former residents of Kuwait is unjustified, Iraq is not entitled to use this failure or the Kuwaiti government's refusal to repatriate one group of former Kuwaiti residents as a reason not to provide information on the remainder, as it at times has suggested it is doing.

For a substantial number on the Kuwaiti government list, there is no evidence that they were arrested by Iraqi occupying forces. But the fact that they went missing during the occupation — a phenomenon unknown in Kuwait before the Iraqi invasion — places a clear obligation on the Iraqi government to try to locate them by vigorously searching its occupation records.

In its October 13 report, the Kuwaiti government responded to the Iraqi assertion regarding the Kuwaitis whose repatriation was rejected by the Kuwaiti government. The Kuwaiti report claimed that ninety-nine percent of those people left Kuwait on their own and were not detained by Iraq. It also claimed that around 2,900 of them were Bedoons of "Iraqi origin" who have no "legitimate residence" in Kuwait. For these reasons, Kuwait claimed, it was under no obligation to allow their reentry.

The Uprising In Iraq

In the immediate wake of Iraq's withdrawal from Kuwait, a new human rights crisis unfolded, this time in war-ravaged Iraq itself. Residents of at least two dozen southern Iraqi cities, joined in many cases by disaffected returning soldiers, rose up against the government in early March, ousting government forces from nearly all of those cities. Similar

rebellions broke out within days throughout the predominantly Kurdish north of the country.

In their counterattack and when consolidating their recapture of these cities, government troops killed thousands of unarmed civilians by firing indiscriminately into residential areas; executing people on the streets and in homes and hospitals; rounding up persons, especially young men, during house-to-house searches, and arresting them without charge or shooting them *en masse*; and targeting fire from attack helicopters on unarmed civilians as they fled the cities.

For their part, rebels and their sympathizers in both northern and southern cities killed hundreds, if not thousands, of members of the security forces and others allegedly working for the Baath Party or the government. While many were killed in battle, others were summarily executed after they had surrendered and were taken into custody, sometimes after summary people's "trials."

The Iraqi authorities have charged the rebels with the uprising-related summary executions of over 2,500; in addition, they claim to have discovered mass graves in Suleimaniyya (bodies of 370 "citizens"), Kut Sawadi (150 bodies of "persons who had been killed by the groups participating in the disturbances") and Kushk al-Basri (fifty bodies).⁴² The Western press also recorded rebel abuses. For example, *The Washington Post* interviewed a Republican Guard officer from the unit that recaptured Karbala in southern Iraq who reported that "dozens of senior officials, including the chief of police, top security agents, the deputy governor and high-ranking members of the Baath Party, were killed in an outpouring of vengeful fury. Captain Abed said many of the victims had their throats cut and bodies burned by the insurgents, while Shiite mobs ransacked their houses and stole food supplies."⁴³

There were reports of looting by rebels and their sympathizers in Basra and a few other cities, but this seems to have been less widespread and systematic than the looting carried out by government troops upon their recapture of cities. Many refugees from the relatively prosperous northern cities likened the plundering by soldiers of stores and households to the looting of Kuwaiti private property by Iraqi soldiers

⁴² Iraqi government reply to U.N. Special Rapporteur Memorandum, pp. 27-28.

⁴³ William Drozdiak, "Devastation in Southern Iraq," April 30, 1991.

during the early days of the occupation of that country.

No reliable figures are available concerning the number of persons killed or wounded by either side during the uprising. Iraqi authorities have not released such statistics.⁴⁴ One journalist reported from Iraq that the government "has forbidden Shi'as from displaying traditional signs of mourning — black flags and paper streamers printed with the names of the dead — because it would enable visitors to count the numbers of Shi'a 'martyrs'."⁴⁵ But senior Arab diplomats told the London-based Arabic daily newspaper *al-Hayat* in October that Iraqi leaders were privately acknowledging that 250,000 people were killed during the uprisings, with most of the casualties in the south.⁴⁶ Independent investigation to verify this figure has not been possible, nor has it yet been possible to determine how many of these casualties were noncombatants.

The turmoil began in Basra on March 1, one day after the cease-fire in Kuwait, and spread within days to Karbala, Najaf, Hilla, Nasiriyya, al-Amara and other mostly Shi'a cities of southern Iraq. The rebellion in the north began on or about March 5; by March 21, Kurdish insurgents controlled every major city in the north except for Mosul, which has an Arab majority.

The rebellions followed a general pattern. On the day of a city's uprising, rebels and masses of civilians ousted government forces from their headquarters, prisons and barracks, killing or capturing them or forcing them to flee. The revolts were aided by soldiers who either switched sides or deserted, as well as by some degree of planning during the preceding weeks and months by underground opposition groups.⁴⁷

⁴⁴ This follows an apparent Iraqi government policy. Final tallies of Iraqi military and civilian casualties during Operation Desert Storm have not been released, although the allies have been no more forthcoming in this regard.

⁴⁵ Lara Marlowe, "A kind of normality," *Financial Times*, May 17, 1991.

⁴⁶ October 2, 1991, as reported in *Mideast Mirror*, October 2, 1991.

⁴⁷ Jonathan Randal, "Kurdish Uprising Aided by Clandestine Army Contacts," *The Washington Post*, March 23, 1991. Activists from southern Iraq told Middle East Watch that underground groups had laid some of the groundwork for the rebellions that erupted in southern cities.

However, the outpouring of popular support for the uprising was largely spontaneous. It was fueled by anger at government repression and the devastation wrought by two wars in a decade, and a perception that Iraqi security forces were uniquely vulnerable after being crushed by the U.S.-led forces.

After seizing power, both Shi'a and Kurdish rebels freed prisoners from known and hitherto secret prisons. Many of the freed prisoners were found to be in poor health as a result of ill-treatment, and some showed scars that they attributed to torture.

The rebels then controlled the "liberated" cities for a number of days, while government troops — primarily the elite Republican Guard and regular soldiers — regrouped outside the city limits and began shelling the city from tanks and firing missiles and automatic fire from helicopters.⁴⁸ Although the fire was sometimes directed at suspected rebel strongholds, little effort was made to limit civilian casualties, and on many occasions throughout the country civilians were directly targeted.

The rebels were unable to resist for long. The army, and particularly the Republican Guard, largely remained loyal to Saddam. Their counteroffensive was buoyed by the failure of the U.S.-led alliance to prevent Iraqi use of helicopter gunships.⁴⁹

Meanwhile, the rebels had little experience defending captured territory and were armed only with rifles, rocket-propelled grenades and a few heavier weapons captured from government forces. They were easily outgunned and outmaneuvered.

As the government forces closed in on a city, thousands of civilians began to flee, terrorized by the indiscriminate shelling and fearful of the vengeance that Iraqi troops would wreak. Over 1.5 million Iraqis escaped

⁴⁸ Middle East Watch heard credible testimony from numerous Kurdish refugees that a number of members of the Iraq-based armed Iranian opposition group, the Mujahedin-e-Khalq, fought alongside government troops in suppressing the Kurdish rebellion in Kirkuk and elsewhere. However, it was not possible to ascertain the extent of their role.

⁴⁹ The provisional cease-fire signed on March 3 prevented Iraq from flying fixed-wing aircraft. While the U.S. shot down two jets flying over northern Iraq in March, it did not interfere with the helicopters that proved so effective in putting down the uprising. This U.S. stance is discussed later in this chapter in the analysis of U.S. policy.

from the strife-torn cities during March and early April, crossing into Turkey and Iran, or fleeing into zones controlled by Kurdish rebels (*pesh merga*) in the north or into the marshes in the south, beyond the reach of government forces.

Their exodus was sudden and chaotic, with thousands fleeing on foot, on donkeys, or crammed onto open-backed trucks and tractors. Many, including children, died or suffered injury along the way, primarily from adverse weather, unhygienic conditions and insufficient food and medical care. Some were killed by army helicopters, which deliberately strafed columns of fleeing civilians in a number of incidents in both the north and south.⁵⁰ Others were injured when they stepped on mines that had been planted by Iraqi troops near the eastern border during the war with Iran, and in rural areas from which the government had forcibly relocated Kurds during the 1980s.

The extent of the land-mine problem became apparent during a Middle East Watch mission to northern Iraq in September. Casualties from land mines during 1991 easily exceeded five thousand and may have topped ten thousand. The Suleimaniyya City Hospital alone recorded the treatment of 1,652 mine victims between March and mid-September, of which 397 underwent amputations. Many of the victims were Kurdish refugees who had returned to Iraq from Iran and Turkey and attempted to make their homes in unmarked minefields.

After bombarding a rebel-held city from afar, Iraqi tanks and infantrymen recaptured city after city, until they were back in control of all cities except for those in the "safe haven" around Zakho and Dohuk created by the U.S.-led alliance to lure Kurdish refugees back from Turkey, and cities in a rebel-controlled swath near the northeastern border with Iran.

Upon regaining control, Iraqi troops engaged in widescale looting and atrocities against the civilian population. The violence was heaviest in the south, where a smaller portion of the local population had fled than in Kurdish areas, owing partly to the danger of escaping through the south's flat, exposed terrain. Those who remained in the south were at the mercy of advancing government troops, who went through neighborhoods, firing indiscriminately and summarily executing hundreds

⁵⁰ Kurdish refugees told Middle East Watch that armed *pesh mergas* sometimes accompanied those fleeing. However, they said, the attacking helicopters made no effort to distinguish between the rebels and unarmed civilians.

of young men.⁵¹

There were many variations to this general pattern. Basra was the scene of chaotic, pitched battles, but never fell completely into rebel hands. In other cities, the rebels ousted the security forces with little difficulty. Similarly, the army recaptured some cities, such as Karbala and Najaf, only after bitter fighting, but swept into other cities, such as Suleimaniyya, with little resistance.

Refugees alleged to Middle East Watch and others that Iraqi helicopters dropped a variety of ordnance on civilians, including napalm and phosphorus bombs, chemical agents and sulfuric acid. Representatives of human rights and humanitarian organizations who saw refugees with burn injuries or photographs of such injuries were unable to confirm the source of these burns. However, doctors who examined wounded Iraqis said that some of their burns were consistent with the use of napalm.⁵²

What follows is a description of human rights abuses committed during March in a sampling of cities, drawn primarily from interviews conducted by Middle East Watch with Iraqi refugees in Iran, Kuwait, Saudi Arabia and London, as well as from press accounts and reports by other organizations.

- o **Basra:** Iraq's second-largest city was the first to erupt. According to a popularly believed account that cannot be confirmed, on March 1 an Iraqi tank driver fired a shell at a giant public portrait of Saddam Hussein. This act of defiance ignited an uprising by members of the hitherto underground Shi'a opposition, angry citizens, and disgruntled and weary Iraqi soldiers who had just fled Kuwait. Many

⁵¹ A letter and memorandum to the Iraqi minister for foreign affairs, dated September 16, 1991, from the U.N. special rapporteur contained specific allegations of summary executions committed by Iraqi forces during the uprising. The memorandum described executions of: 150 men and boys who were taken to a military garrison near Hilla on March 16; another seventy civilians from the same city on March 19; scores of civilians in Samawa between March 20 and 29; seventy patients and medical personnel at Hilla hospital on March 9; hundreds of civilians in Qara Hanjir from March 27 to 29; and the death by burning of forty people from Arbat on April 3.

⁵² See, for example, Amnesty International, "Iraq: Human Rights Violations Since the Uprising/Summary of Amnesty International's Concerns," July 1991.

of those who took part expected support from American troops who were stationed near the city outskirts, especially after President Bush's February 15 call on Iraqis to rise up and oust Saddam.

Chaos reigned in many neighborhoods, as loyalist troops and bands of rebels and army deserters dodged snipers and fought at close quarters. At the outset, rebels slaughtered persons suspected of being government officials, Baath Party members and secret police. Meanwhile, the army rolled tanks through residential neighborhoods, firing at residential buildings and at civilians. Troops entered homes and machine-gunned civilians. The streets were littered with bodies, and loyalist troops conducted mass executions in public squares of persons who had been rounded up. Hussein Ali Kazem, 22, told *The Washington Post* that he watched the public execution of some four hundred people in central Basra before he fled the city on March 6. "Their hands were tied, then they tied them to tanks and shot them," he told reporters in Safwan. "The bodies are still there."⁵³ Two refugees interviewed by Middle East Watch described watching separate incidents in which troops rounded up civilians, bound their hands and feet, attached rocks to them and tossed them into the Shatt al-'Arab waterway.

There were several independent reports that the troops used human shields to protect the tanks, either tying women and children to the tanks or forcing them to walk in front. One refugee interviewed by Middle East Watch in London saw a column of twenty tanks on March 8 coming from al-'Ashar toward the city center, with three children tied to the lead tank.

Both the rebels and the army engaged in looting in Basra, a city where war and the U.N.-imposed sanctions had created shortages and high prices.

Although the army had the upper hand within five days of the outbreak of the rebellion, it was not until April that it had completely subdued resistance in the city. By that time, the uprising had greatly

⁵³ Lee Hockstader, "Baghdad Warns Insurrectionists They Will Pay," March 8, 1991.

compounded the devastation that Basra had suffered during the Iran-Iraq and Gulf wars.

- o **Najaf:** The uprising in Najaf was relatively long-lived due to a higher degree of planning by the Shi'a opposition. On March 4, demonstrators, some of them lightly armed, marched through the city streets, swelling in numbers as they went along, and surrounded and seized government buildings. A refugee from Najaf told Middle East Watch: "Saddamites who resisted were killed. Those who did not resist were taken prisoner, and then killed when the army attacked."

The army's counteroffensive began in earnest more than one week after the uprising. Its tactics were similar to those employed against other rebel-held cities: an initial phase of firing ground-to-ground and helicopter-launched missiles indiscriminately at civilian areas, followed by the entry of troops into the city, house-to-house arrests, the public execution of suspected rebels, and the invasion of Saddam Hospital and the slaughter of patients and medical staff. One refugee from Najaf told Middle East Watch, "If any resistance emanated from a house, that house was demolished." Refugees from other cities also described incidents of troops punitively demolishing houses, a form of summary collective punishment.

The last rebel stronghold in Najaf was the Tomb of the Imam Ali, one of the most important Shi'a pilgrimage sites in the world. The army pounded the shrine with mortar fire before entering it and shooting both rebels and civilians who had held out there. Other religious shrines and schools in the area were also damaged by shells, and others were demolished after the suppression of the uprising.

One young man described to Middle East Watch watching as soldiers went through a group of young men in their custody outside a former hotel, separating those suspected of participating in the uprising and executing them. The witness fled the scene after seeing four of the men shot dead. An Iraqi military officer who deserted told *The Washington Post* of a massacre in Najaf by loyalist troops: "When the Iraqi army entered...the families that had fled the fighting returned with their children. They lined them up and executed

them." Among the victims were his wife and three children.⁵⁴

The army also rounded up Shi'a clerics in Najaf, including the ninety-five-year-old Grand Ayatollah abu al-Qassem al-Kho'i, the revered Shi'a cleric with a worldwide following. A member of the Khoei family reported to Middle East Watch that some 105 individuals affiliated with the Grand Ayatollah — relatives, staff, religious students and some senior clerics, including eighty-nine-year-old Ayatollah Mortaza Kadhumi Khalkhali, a top aide of the Grand Ayatollah — were arrested in Najaf between March 20 and March 23.⁵⁵ A September report by the U.N. special rapporteur on Iraq notes some of these detentions. Iraq's October 25 reply to the report states that of the sixty-two associates of the Grand Ayatollah reportedly arrested in March and taken to Baghdad, four "are alive and enjoying full freedom" but "the competent authorities have no information concerning the others." Iraqi Shi'a sources told Middle East Watch on December 19 that the Grand Ayatollah, whose home in Najaf continues to be under surveillance by the Iraqi security forces, is living in extreme distress due to the destruction of the religious schools in Najaf and Karbala, concern about the fate of his missing family members, staff and students, and his lack of contact with followers around the world.

- o **Karbala:** Karbala was probably the major city most devastated during and after the uprising. The rebellion began on March 5 when lightly armed rebels, joined by thousands of civilians and deserting soldiers, attacked government buildings. They had achieved full control of the city by the next morning.

Within one day, government tanks and helicopters began pounding the city with indiscriminate fire. When army troops entered the city

⁵⁴ Nora Boustany, "A Trail of Death in Iraq," March 26, 1991.

⁵⁵ According to information supplied by the London-based al-Khoei Foundation, all of the detainees were affiliated to Shiite religious schools in Najaf. Of the total number, forty-three were Iraqi nationals, twenty-eight were Iranian nationals, and the balance were nationals of Lebanon, India, Bahrain, Afghanistan and Pakistan.

they encountered fierce resistance. There were pitched battles at al-Husseini hospital, which was used to treat wounded rebels. A physician from Karbala who fled to Iran told Middle East Watch:

[The hospital] was run by the rebels. Doctors there treated the wounded, people donated blood and whatever medicine they had at home. The army, when it attacked, concentrated its artillery on the hospital. When they invaded, they rounded up doctors and nurses, tied their hands and blindfolded them. They were later released, only to be rounded up again later and killed. The rebels put up strong resistance in defending the hospital.

The shrines of Abbas and Hussein, which became the city's rebel headquarters, were heavily damaged by artillery fire and by rockets fired from helicopters between March 7 and 11, as were the buildings near them. Further damage occurred when Iraqi troops burst into the shrines, in which rebels and civilian sympathizers had barricaded themselves. Hundreds of rebels and their supporters are said to have died during the siege, either from the artillery and rocket fire, or from the gunfire of the invading troops.

When security forces established daytime control again on about March 19, they took vengeance on both rebels and civilians who had not fled. They moved from district to district, rounding up young men suspected of being rebels, shooting some of them on the spot and executing others in large groups. In both Najaf and Karbala, there were reports that Shi'a clerics who walked on the streets were shot on sight, and that young men were "systematically collected," taken to stadiums, and never seen again. Summary killings occurred "in a manner that made a point," one Iraqi Shi'a told Middle East Watch. "Dead bodies were mined and they were not allowed to be removed from the streets." John Simpson, foreign affairs editor of the British Broadcasting Corporation, wrote about the authorities' round-up of the clerics earlier in the year. He visited Najaf in late April and found the city's center deserted: "Thousands of Shi'a clerics have been rounded up in Najaf and Karbala and disappeared," he

wrote. "Normally the streets would be full of them. Not now."⁵⁶

Civilians fleeing Najaf and Karbala were strafed by helicopters as they traveled on the road between the two cities. A refugee from Najaf who was interviewed by Middle East Watch in Iran that on March 17, "People were told on the loudspeakers to evacuate the city, for their own safety, within 24 hours and head north, in the direction of Karbala. When thousands of people had gathered in the northern outskirts of the city — it was afternoon already, around 3 o'clock, and they were mostly women and children — helicopters opened fire from machine guns at them. Between 250 and 300 were killed."

- o **Suleimaniyya:** On March 7 and 8, the nearly all-Kurdish city of Suleimaniyya became the first major city to fall to Kurdish rebels. Four weeks later, it was the last to be recaptured by Iraqi forces.

The ouster of government forces came in an uprising led by a small contingent of *pesh mergas*. Uprisers overwhelmed the government forces who had sought refuge in the headquarters of the dreaded security service (*mudiriyat al-amm*), capturing and summarily executing agents of the security forces and freeing prisoners held in grim cells. An English teacher recounted that the *pesh merga* and their supporters "took three hundred Baathist prisoners.... We punished those who had martyred our brothers and looted our homes. We killed them without trial.... During the first days after the *pesh merga* took over, some escaped. We caught many and killed them by shooting them and with axes. The mothers of martyrs killed twenty-one escaping soldiers with axes and stones."

During the next three weeks, Suleimaniya remained under *pesh merga* control. Kurdish refugees streamed into the city from other Kurdish towns that were coming under attack.

The army's assault on Suleimaniyya began around March 31. Troops began firing rockets from outside the city into residential neighborhoods, and dropping rockets on residential areas from helicopters. Sensing defeat, rebel leaders urged the population to

⁵⁶ "The Voices Against Saddam," *The Observer* (London), April 28, 1991.

leave before the army attempted to enter the city. The city emptied between April 2 and 4, and government forces easily retook the city. The troops then engaged in widescale looting of homes and stores, according to refugees from Suleimaniyya who later returned to the city.

- o **Kirkuk:** The battle for Kirkuk, the last major city to be captured by the Kurdish rebels, was especially fierce. An oil-rich city with an ethnically mixed population, Kirkuk has long been a bone of contention between the Kurds, who demand its incorporation into the Kurdish Autonomous Region, and Baghdad, which has sought to control it by relocating Arabs from the south to Kirkuk and evicting Kurdish families.

By mid-March, Iraqi forces already had been ousted from several Kurdish and southern cities. Fearing that Kirkuk would be next, Baghdad dispatched reinforcements to Kirkuk.

On about March 10, the security forces placed predominantly Kurdish neighborhoods of the city under curfew and rounded up several thousand men from their homes, ranging in age from young teenagers to men in their fifties. The men, all of them nearly without exception Kurdish, were transported out of the city and held in vast compounds without charge or trial under harsh conditions, although they were neither interrogated nor tortured. Most were released in mid-April but were told that they would not be permitted to reenter Kirkuk. Many of the men traveled instead to Kurdish-controlled areas or to refugee camps in Turkey and Iran.

After the massive roundup of Kurdish men, Iraqi troops began demolishing houses in Kurdish neighborhoods, using dynamite and bulldozers. In testimony corroborated by others, a university student from Kirkuk told Middle East Watch, "Troops came to Arassa, a neighborhood that is strongly pro-*pesh merga*. They took the women to Kara Angir [a town north of Kirkuk], and told them, 'Go to the *pesh merga*.' The next morning, the forces demolished the houses. Arassa is totally destroyed, all the houses have been destroyed."

Nevertheless, Kirkuk erupted in rebellion on March 19 and by the next day was in *pesh merga* hands. Unlike in Suleimaniyya, however, their victory was promptly contested. Beginning on March 21, Iraqi

tanks stationed outside the city began pounding residential areas with artillery rounds day and night, while Sekhoi helicopters flew overhead by day firing missiles.

After a week of bombardment, Iraqi tanks entered the city on March 27. Among their first acts was to invade Saddam Hussein Hospital and to slaughter patients and medical staff, opening fire indiscriminately, slashing patients with knives and, according to eyewitnesses, throwing people out of windows. As in other cities, the hospital had been filled with both rebels and civilians who had been injured during the fighting. A primary school teacher told Middle East Watch, "When the tanks entered Kirkuk on March 27, they went to Saddam Hussein Hospital. My house is very near the hospital. About 150 meters away from me, I saw troops enter the hospital and then I saw *pesh merga* being thrown out of the windows. After they threw them on the ground, they shot those who were not dead from the fall."

As they consolidated their control, troops ordered the remaining Kurdish population of Kirkuk, predominantly women and children, to leave the city within twenty-four hours. Those who fled at this late stage reported widespread looting of homes by government troops and Arabs who had driven north from central Iraq. Kurds who attempted to return to the city in April were turned back at checkpoints that had been set up outside the city.

The Iraqi government was quick to assert that it had overcome the challenge of the insurgents, although reports of rebel attacks against government forces and installations continued throughout the year. Shi'a refugees in southwestern Iran boasted to Middle East Watch in late April that fighters were reinfiltrating Iraq and launching nighttime attacks on military targets on the roads near Basra.

Ongoing Government Abuses

On March 16, President Saddam Hussein castigated the rebels as "malicious traitors infiltrated from abroad" and declared that the uprising

in the south had been crushed.⁵⁷ On April 5, Iraq's ruling Revolutionary Command Council (RCC) issued a statement, announcing "the complete crushing of acts of sedition, sabotage, and rioting in all towns of Iraq." In the same communique, the RCC announced that it had "decided to pardon all Iraqi Kurds in the autonomous region for any behavior that they could be accountable for by law — except crimes of murder, violations of honor, and theft — that took place during the riots and acts of treachery."⁵⁸ On April 20, an RCC decision extended a similar amnesty to all Iraqis involved in the uprisings.⁵⁹

There is evidence to suggest that the amnesties were honored in the breach, particularly in the south where government forces had greater control. Saddam emphasized in an April 13 speech in Arbil that those suspected of certain offenses during the uprisings would be dealt with harshly: "[T]he orders the authorities have received are very clear: go after the killers, who violate the people's honor, and those who stole the

⁵⁷ Iraqi officials repeatedly claimed that Iran and Iranian-backed forces were involved in the uprisings, although little attention was devoted to this issue in the Western media. On March 12, Pentagon spokesman Pete Williams said there was no evidence of Iranian military assistance to the uprisings "or indeed any official Iranian assistance at all." (Elaine Sciolino, "Iraqi Gains Against Rebels Sometimes Fade, US Says," *The New York Times*, March 13, 1991.) On March 19, however, Bush Administration officials said that Iran was supplying arms to insurgents in the north and south. "There is some support, some arms from Iran," one official told *The New York Times*. "Is it a major supply operation? The answer is no." (Elaine Sciolino, "Kurds Alone Viewed As Unlikely to Oust Saddam," *New York Times*, March 20, 1991.)

⁵⁸ Baghdad, Iraqi News Agency (INA), April 5, 1991, as reported in FBIS, April 5, 1991. The decision was formalized in RCC Decision No. 103 of April 10, 1991.

⁵⁹ RCC Decree No. 109, dated April 20, stated: "All Iraqis, whether in northern, southern or central Iraq, will be included in the general and comprehensive pardon stipulated in RCC Decree No. 103 dated 10 April 1991. They will be pardoned from any legal effect or legal proceedings resulting from any action punishable by law which took place during the circumstances of the events of rioting and treason. The crimes of premeditated murder, violation of honor, and theft are exempted from this."

state's assets and have not returned them. We give no guarantees to these people."⁶⁰

There were also post-uprising reports of arrests and summary executions throughout the country, purges in the Iraqi military and Baath Party,⁶¹ and the detention of security-force personnel considered "soft" during the uprising.⁶² A representative of the Iraqi Kurdistan Front told Middle East Watch that some four hundred Iraqi soldiers who had returned to government lines after being captured by Kurdish irregulars in August were executed on charges of having failed to put up effective resistance to the enemy.

Government opponents charged that despite the amnesties, many Iraqis had been arrested and taken to detention centers, some of them secret, in Baghdad and elsewhere. The National Security center in the Radhwaniyya district of Baghdad was identified as one such facility. In a June press release, the London-based al-Khoei Foundation claimed that some 150,000 people had been arrested in southern Iraq, including 15,000 from Najaf, a center of the uprising. The U.N. special rapporteur's September memorandum highlighted that, despite the amnesties, arrests were continuing:

[A]llegations remain that the amnesties are...used as a means of rounding up members of opposition groups, and that the terms of the amnesties are frequently violated by government agents who arrest certain persons returning out of places of hiding....Several reports allege that persons already detained, as with several of those arrested during (and in violation of) the amnesties, rather than being

⁶⁰ Baghdad INA, April 14, 1991, as reported in FBIS, April 15, 1991.

⁶¹ See, e.g., Caryle Murphy, "Iraq's War Defeat, Civil Strife Causing Crisis in Baath Party," *The Washington Post*, July 16, 1991.

⁶² For example, the Supreme Council for Islamic Revolution in Iraq, an Iran-based Shi'a opposition coalition headed by Ayatollah Mohammed Bakr al-Hakim, reported in May that some forty Iraqi security forces and military-intelligence personnel in Amara, a city north of Basra, were arrested, apparently because of their failure to put down the uprising there. (Press Release, London, May 20, 1991.)

released have actually 'disappeared' in the custody of the Government.

The special rapporteur noted "significant and repeated allegations" regarding Kurds from Arbil who had returned under the April amnesty and "were detained,...taken to the city stadium, subjected to punishments or executed, or have subsequently disappeared."

Iraqis who fled to U.S.-controlled Safwan in southern Iraq came with reports of executions in Basra as late as May. *The Washington Post* reported that, according to refugees, "Iraqi troops are still seizing rebels, and civilians with any rebel links, after extracting confessions from friends and neighbors."⁶³ A teacher told *The Post*: "They shoot them and throw their bodies in the street to make people scared of doing anything." A truck driver claimed: "They used an execution squad right in the main square. They would blindfold their victims and then shoot them, just leaving the bodies there." One refugee said that the authorities were "torturing people into giving the names of people who are involved in rebel fighting."⁶⁴ The *Post* reported from Baghdad in May that the city was "rife with talk that thousands of southern Shiite Muslims suspected of rebel sympathies during the anti-regime uprisings last March have been summarily tried and executed recently."⁶⁵ The U.N. special rapporteur's September memorandum noted reports of the summary execution by firing squad of seventeen people in Arbil on April 17. The memorandum also reported allegations that summary executions "are continuing to take place throughout the country, particularly in the northern Kurdish Autonomous Region, in southern Shia centers, and in the southern marshes."

The *Post* noted that the Iraqi authorities were continuing to respond in characteristic fashion to actual and perceived opponents: "Prisons are described as more full than ever. Families receive the coffins of sons and husbands, accompanied only by a military court order of execution, no

⁶³ John Arundel, "Refugees Say Saddam Is Still Killing Foes," *The Washington Post*, May 10, 1991.

⁶⁴ *Ibid.*

⁶⁵ Jonathan Randal, "Iraqis' Morale Ebbs as Sanctions, Saddam Persist," June 1, 1991. The story's dateline was Baghdad, May 25, 1991.

reasons given. There are mass arrests and disappearances."⁶⁶

Continued clashes between government forces and rebels often were at the expense of innocent civilians, particularly when government forces retaliated with indiscriminate artillery shelling and helicopter-gunship attacks on rebel positions. In northern Iraq, fear motivated large numbers of Iraqi civilians to flee to areas where they felt safe from government forces. The U.N. High Commissioner for Refugees (UNHCR) reported in late October that tens of thousands of internally displaced Iraqis remained in the mountain areas of the north, "either because their towns have been destroyed or because they fear a fresh outbreak of violence."

Both sides shared responsibility for the continuing unrest. Insurgents openly took credit during the uprising and its aftermath for the capture and execution of Iraqi security force, intelligence and Baath Party personnel.⁶⁷ The most highly publicized abuse by anti-government forces during the year was the October 7 summary execution by Kurdish rebels in Suleimaniyya of at least sixty captured, unarmed Iraqi soldiers. According to Reuters photographer Kurt Schork, who witnessed the killings, the men were shot, kneeling, at point-blank range.⁶⁸ The Kurdistan Democratic Party, whose fighters were suspected of responsibility, condemned the incident and said it was opening an investigation. To date, the findings of this investigation have not been announced.

Targeting of Shi'a Institutions

Representatives of Iraq's Shi'a community reported to Middle East Watch in 1991 that the Iraqi regime intensified its deliberate targeting of Shi'a cultural and nonpolitical institutions in an attempt to destroy the fabric of Shi'a society. These attacks were part of what they called a

⁶⁶ *Ibid.*

⁶⁷ See, e.g., reports of (Clandestine) Voice of Rebellious Iraq, May 13, 1991, and (Clandestine) Voice of Iraqi Opposition, May 14, 1991, as reported in FBIS, May 14, 1991.

⁶⁸ "Kurdish Guerrillas Killed Iraqi Troops Captured in Battle," *The Washington Post*, October 11, 1991.

broader campaign of post-uprising "revenge on a massive scale" in southern Iraq.⁶⁹ Iraqi Shi'a point out that the regime's retaliatory actions continue a pattern of discrimination by the Sunni-dominated government against the Shi'a religious majority in Iraq. They charge that the discrimination includes violations of religious and cultural rights including bans on publishing contemporary or traditional Shi'a written materials, transmitting radio or television broadcasts with Shi'a content, and teaching the Shi'a creed in the state school system, as well as widespread employment discrimination in Iraq's public sector.⁷⁰

Promises of Reform

Despite Iraq's resounding military defeat by coalition forces and the turmoil of the uprisings, Saddam Hussein maintained and steadily consolidated his grip on power. Iraq's feared internal-security apparatus appeared to have emerged sufficiently unscathed from the Gulf war and the uprisings to remain a powerful presence. By September, some opponents of the regime felt that even if some political accord with the regime was struck, the most they could hope for in the immediate future was "a softening dictatorship" in Iraq. They stressed to Middle East Watch that the in-country opposition had "no illusions" about the prospects for genuine political reform under Saddam Hussein. The government's

⁶⁹ A number of their allegations are included in the November 1991 report of the U.N. special rapporteur on Iraq, including the following: "there are no functioning religious centres of learning in Najaf and Karbala, including the ancient universities...the Al-Khoei school has been razed to the ground...the traditional call to prayer and pilgrimage in the holy shrine of Najaf and Karbala has been banned along with public prayers in these holy cities...many Shiah clergymen are banned from wearing their traditional uniforms and from performing their religious duties...more than 1,000 religious books have been banned by the Ministry of Information...various religious practices (such as Shiah traditional rituals about Iman Hussein) are prohibited both in public and in private places...the holy shrines of Shiah Islam (especially in Najaf and Karbala) have been desecrated by government forces...religious manuscripts and books in a number of libraries are said to have either burnt or otherwise purposefully destroyed." (p. 16)

⁷⁰ See *Dialogue*, A Newsletter Published by the Public Affairs Committee for Shias (London: November 1991), p. 6.

actions in 1991 tended to bear out this view, reinforcing the perception that the regime's rhetoric of reform was designed more for the international community than for the skeptical and beleaguered Iraqi public.

For several months after Iraq's defeat in the Gulf war, government leaders attempted to rebuild their domestic credibility through pledges to introduce political liberties unseen since the Baath Party's seizure of power in 1968. In a televised speech on March 16, Saddam Hussein blamed the 1980-88 Iran-Iraq war for the deferral of the political reforms originally pledged in 1979. He held out a renewed promise of reform but, notably, without specifying a timetable for implementation. "Our decision to build a democratic society based on the Constitution, the rule of law and political pluralism is a decisive, irrevocable decision," he said.

Then newly appointed Prime Minister Saadoun Hammadi, in a March 30 speech on national television, spoke directly about democracy. Terming it "an integrated system," he stated that "in organizing relationships, democracy is not confined to the top echelon of the state but extends to all institutions from top to bottom." He pledged that "the democratic reform process in all the state institutions will start gradually and in accordance with the country's circumstances."⁷¹

In an interview in May, Deputy Prime Minister Tariq Aziz said that among the reforms being contemplated were the abolition of the ruling Revolutionary Command Council⁷² and replacement of the for-life presidency of Saddam Hussein with renewable seven-year presidential terms.⁷³ In a televised speech on July 17, Saddam mentioned that a new political-parties law would soon be in effect. "We will soon start to apply the principles of pluralism in a broad manner....Pluralism will be the main pillar in the next new phase," he promised.

⁷¹ Baghdad INA, March 30, 1991, as reported in FBIS, April 1, 1991.

⁷² Such a move, if implemented, would have far-reaching consequences. Under the Iraqi Constitution, the unelected RCC is empowered unilaterally to promulgate laws and decrees, to mobilize the army, to approve the budget, to ratify treaties, to declare war, and to conclude peace. The RCC alone is empowered to amend the Constitution.

⁷³ William Drozdiak, "Iraq Termed Committed to Democracy," *The Washington Post*, May 8, 1991.

Despite these commitments, it soon became clear that government initiatives said to be aimed at political reform and pluralism were fundamentally flawed. Most important of these were the new political-parties law, introduced in September, and the negotiations with the Iraqi Kurdistan Front coalition, begun in April and stalled several times, about measures for nationwide democratization.

The dismissal in mid-September of Saadoun Hammadi as prime minister, and his removal from the RCC, was viewed as a setback for the putative effort at political reform. It also was seen as a signal of Saddam Hussein's increased confidence and resolidification of power. In April, Hammadi, a Shi'a and Baath Party loyalist known for his pragmatic views, had openly advocated "the importance of strengthening the rule of law through the reform of the legal system, press freedom, and pluralism in all spheres, as well as through the change of revolutionary institutions into democratic and constitutional ones," according to the state-controlled Iraqi News Agency. One Western authority on the Arab world explained: "It was after he had expressed these views at a congress of the Baath party in Baghdad on 13 September that Hammadi was sacked."⁷⁴ Some saw the move as a precursor to additional purges of reformers in the bureaucracy and the military and security establishments. The significance of Hammadi's later partial rehabilitation, through his appointment on November 6 as a presidential adviser with cabinet rank, remains to be seen.

Political Parties

The limits of reform could be seen in Political Parties Law No. 30 of 1991, which was issued by the RCC in September after the law had been amended and approved by the National Assembly, Iraq's rubber-stamp parliament. The statute states in part that "political parties constitute one of the basic pillars of the democratic system through which the citizen exercises his rights, duties and freedom." But the law grants the government significant latitude in vetting political parties. Under Article 3, parties must support Iraq's territorial integrity and national unity, effectively foreclosing the legalization of any Kurdish party that uses nonviolent means to advocate separatism or an independent Kurdish

⁷⁴ Gerald Butt, "Strengthening his power," *Middle East International*, September 27, 1991.

state.⁷⁵ Article 3 also mandates that parties "value and be proud" of the 1958 and 1968 revolutions, in effect a pledge of political allegiance to the ruling Baath Party. In addition, Article 19 prohibits the organizing of political parties among the "armed forces, the internal security force and the other security organs"; only the Baath Party is entitled to recruit members in these key sectors.

The law empowers the Council of Ministers to approve or reject parties' requests for legalization, but the law gives oversight of political parties to the feared Ministry of Interior. The law clearly envisions the creation of Interior Ministry dossiers on all nascent political-party leaders and activists. Parties must register their applications with the Interior Ministry and submit the names, addresses, professions and brief personal histories of their founding members, who must number at least 150. Under Article 22, each January the Interior Ministry, as part of its ongoing monitoring, must be provided with the names, addresses and professions of all new party members as well as the names of those whose membership has lapsed.

The law provides for government aid to political parties and lays the groundwork for grants to be made on a political basis. Among the factors for grant decisions set forth in Article 24 is a political party's "role in the national struggle."

In an August interview, then-Prime Minister Hammadi was asked how much competition the ruling Baath Party would tolerate, and whether opposition political parties would ever be allowed to form a government. His answer was evasive: "[W]e may be ready to share power with another party if the situation allows and if there was such a party."⁷⁶

Negotiations with the Kurds

It was the government's negotiations with the Iraqi Kurdistan Front (IKF) about an autonomy agreement that revealed most transparently the government's interpretation of democratization. The talks began in April

⁷⁵ Article 5 originally specified that political parties based on a mix of religion and politics would not be permitted; this provision was struck by the National Assembly in a session on August 24.

⁷⁶ *Jordan Times*, August 8-9, 1991.

between the government and the eight-party IKF, led by Jalal Talabani of the Patriotic Union of Kurdistan (PUK) and Massoud Barzani of the Kurdistan Democratic Party (KDP). In addition to greater autonomy in Kurdistan, the IKF submitted a proposed agreement which sought:

democratic rights under the rule of law. This must include guaranteed respect for human rights, multiparty pluralism, free elections to return the people's representatives to parliament, freedom of the press and publications, and the liberty to organize trade unions, professional associations and democratic institutions. Positions of power and authority must change hands peacefully in line with the freely-expressed will of the people.

The IKF proposals included provisions for an interim coalition government to arrange for free general elections in six months, and the participation of all national opposition political forces in the election of a National Constituent Assembly to draft a permanent constitution "and appoint a government of the majority." The government countered by proposing that the revised constitution, drafted in 1990 before Iraq's invasion of Kuwait but never adopted, be put to a national referendum.⁷⁷

KDP leader Barzani explicitly stated in June that democracy means "a multiparty system; freedom of the press; free elections; separation of the party and state authorities; and separation of the judicial, executive and legislative authorities. We also agreed to draw up together the draft constitution and the press law and the multiparty system law."⁷⁸ The same month Saddam reportedly sought Kurdish support to control the Shi'a opposition in the south, in the form of a demand that the Kurds "preserve the gains" of the 1968 revolution which established Baath Party

⁷⁷ The draft constitution was published in July 1990. In the assessment of the U.S. State Department, the document "would alter the form but not the substance of Iraq's political system. In the new 'Presidential Republic,' the President would assume most of the current powers of the RCC, which would be abolished." (U.S. State Department, *Country Reports on Human Rights Practices for 1990*, p. 1457.)

⁷⁸ Interview on June 16, 1991, as broadcast on (Clandestine) Voice of the People of Kurdistan and reported in FBIS, June 18, 1991, at 10.

hegemony over the country. One Kurdish negotiator at the talks interpreted this to mean that "when there is an uprising, a demonstration or confusion against the Baath Party that we must take the gun to kill their enemies."⁷⁹ He added that government representatives "defined verbally" the enemies as pro-Iranian Shi'a groups and pro-Syrian parties.

In a September 17 interview, PUK leader Talabani discussed the status of the negotiations with the government. In addition to disagreement over the boundaries of autonomous Kurdistan and objections to the continuing policy of "Arabization" in the cities of Kirkuk and Hanefin, he said that "the main obstacles are concerning democratization; the Iraqi regime totally refuses to make any kind of change." Talabani also indicated that the IKF was opposed to the government's condition that Kurdish parties have no contact with external groups. "[T]he right of the Kurdish parties and the IKF to have relations with other parties outside of Iraq was prevented according to the new law published by the so-called RCC," Talabani said. "[W]e are insisting that we have the right to contact other parties, organizations, international bodies, human rights groups and etc. and we will never accept such a presentation by the Iraqi government."⁸⁰

U.N. officials expressed concern in September over the uncertain status of some 120,000 to 130,000 former Kurdish residents of Kirkuk who had fled the city during the uprising.⁸¹ The coordinator of U.N.

⁷⁹ Jonathan Randall, "Kurds Say Iraqi Demands Delay Autonomy Pact," *The Washington Post*, June 25, 1991.

⁸⁰ *Ankara Turkish Daily News*, September 18, 1991, as reported in FBIS, September 23, 1991.

⁸¹ Kurds claim the city is part of Iraqi Kurdistan, while Turkomans -- Iraqis of Turkish descent -- say it is Turkoman. Muzaffer Aslan, secretary general of the National Turkoman Party of Iraq, said in September: "The plight of the Turkoman people is terrible....Saddam Hussein is now trying to enact legislation to Arabize the Turkoman people....Thousands of Arabs are being resettled in Kirkuk, with more than 2,726 arriving in just the last two weeks. Saddam Hussein wants to make the Turkomans a minority in this area. Meanwhile, the regime is forcing the Turkomans to register themselves as being of Arab extraction." (*Istanbul Gunaydin*, September 2, 1991, as reported in FBIS, September 6, 1991.) Fu'ad Muassum, a senior IKF official, affirmed in September that the Iraqi

activities in Iraq, Bernt Bernander, said that the Kurds sought a U.N. presence in the city prior to their return but the Iraqi authorities have not agreed to the opening of a U.N. office there.⁸² Beginning in October, the government began to exert economic pressure on those areas of northern Iraq that were under the virtual control of Kurdish rebels. Gasoline deliveries to Arbil and Suleimaniyya were reduced, delivery of food and electricity was curtailed, and civil servants in the north were required to move to cities under government control or be fired.⁸³ By the beginning of November, there was a significant concentration of Iraqi troops and equipment around Arbil and Suleimaniyya, fueling fears that the government might be planning to oust the rebels by force.⁸⁴ On November 12, it was announced that the government and the Kurds had struck a bargain: the economic sanctions would be lifted, and the Kurdish forces, in turn, would move out of the cities but maintain defensive positions on their perimeters.⁸⁵ It was not clear whether the Kurds would agree to Iraqi troops entering the cities and towns; one KDP spokesman said: "We understand that government forces will not attempt to come into Irbil. If they attempt to come by force, a united force will fight them."⁸⁶ But later in November, *The New*

government was counting Turkomans in Kirkuk as Arabs: "The Baghdad Government says that the majority of the population in Kirkuk is Arab. The fact is they are considering that the Turkmen who live there are Arab." (Agence France-Presse, September 14, 1991, as reported in FBIS, September 17, 1991.) Kurds also claim that the authorities are attempting to Arabize Kirkuk, prevent its inclusion in the autonomous region, and not allow displaced Kurds who fled earlier in the year to return.

⁸² Agence France-Presse, September 16, 1991, as reported in FBIS, September 17, 1991, at 20.

⁸³ Patrick E. Tyler, "Baghdad Now Seen Exerting Economic Pressure on Kurds," *The New York Times*, November 6, 1991.

⁸⁴ John Murray Brown, "Agreement Eases Confrontation Between Iraq's Army, Kurds," *The Washington Post*, November 13, 1991.

⁸⁵ *Ibid.*

⁸⁶ *Ibid.*

York Times reported from northern Iraq that the government did not honor this agreement with the Kurds, "instead closing roads and confiscating food and fuel from the few cars they let through. As part of the deal to end the blockade, the Kurdish guerrillas pulled their forces back three miles. But they say they have seen Iraqi soldiers move forward to fill the gap and begin to hammer their new positions outside Erbil, positions that are in the [allied security] zone."⁸⁷ The United Nations High Commissioner for Refugees reported on December 5 that 200,000 Kurds had fled areas of eastern Kurdistan, where Iraqi forces in October began shelling villages in the areas of Kelar, Kifri and Chamchamal in Suleimaniyya province.⁸⁸ UNHCR coordinator for the emergency program in the Gulf Carroll Faubert said at a press conference in Geneva on December 5: "We are extremely worried about the situation. We see the possibility of hundreds of thousands of newly displaced persons living in the snow."⁸⁹

The Oil Export Impasse

By most accounts, all Iraqi civilians — except the affluent and the politically connected — suffered directly throughout 1991 from the impact of U.N.-imposed sanctions. The most pressing problems for civilians were phenomenal price inflation for basic food staples, poor diet and sanitation, corresponding medical problems, especially among infants and young children, and inadequate medical services from a beleaguered and grossly undersupplied health-care system. In November, Iraqi Health Minister Dr. 'Abd-al-Salam Muhamed Sa'id reported that over 68,093 Iraqis had died between August 2, 1990 and September 30, 1991 as a

⁸⁷ Chris Hedges, "Kurdish Talks Frozen, Iraqis Advance Anew," November 26, 1991. (The story's dateline was November 23, Erbil, Iraq.)

⁸⁸ Agence France-Presse, December 5, 1991, as reported in FBIS, December 6, 1991.

⁸⁹ Kurt Schork, "Iraqi Troops Move on Kurds as Refugee Toll Climbs," *The Washington Post*, December 8, 1991.

result of sanctions-related shortages of food and medicine.⁹⁰ He said that of this number 19,863 were children under five years old who died from diarrhea, acute respiratory infections, malnutrition and contagious diseases. Another Health Ministry official, Under-Secretary Dr. Shawki Murqus, gave a different interpretation of the child-death figure in an interview earlier in the month with *The New York Times*. He said: "[T]he total deaths of children under 5 in Iraq since August 1990 was 19,863. This figure...includes normal mortality as well as excess deaths caused by disease and malnutrition."⁹¹

The Sanctions Committee of the U.N. Security Council decided on March 22 to permit the unrestricted export of food to Iraq, as long as the committee was notified about each shipment.⁹² In addition, the import of other materials and supplies to meet humanitarian civilian needs — such as fuel, agricultural machinery, and water and sewage system parts and equipment — would be automatically allowed if none of the committee's members objected. The formal U.N. Security Council cease-fire resolution (No. 687) of April 3 included these new guidelines.

However, the easing of the sanctions was not accompanied by a lifting of the U.N. prohibition of member states' imports of Iraqi products. Iraq claimed that with its overseas assets frozen it needed to export oil to acquire the foreign exchange to purchase food and other necessary items. It was not until September 19 that the U.N. Security Council, in Resolution 706, authorized Iraq to sell, under U.N.

⁹⁰ Baghdad INA, November 26, 1991, as reported in FBIS, November 27, 1991.

⁹¹ Patrick E. Tyler, "Iraq Is Blocking Aid Distribution," November 3, 1991.

⁹² Paul Lewis, "United Nations Eases Rules On Food and Fuel for Iraqis," *The New York Times*, March 23, 1991. Previously, pursuant to U.N. Security Council Resolution 666 of September 13, 1990, food could be exported to Iraq only if the U.N. Sanctions Committee determined that "circumstances have arisen in which there is an urgent humanitarian need to supply foodstuffs to Iraq or Kuwait in order to relieve human suffering." If food was to be sent, the resolution provided that it be done under the auspices of the United Nations "in cooperation with the International Committee of the Red Cross or other appropriate humanitarian agencies and distributed by them or under their supervision in order to ensure that they reach the intended beneficiaries." There was no restriction on the shipment of medicine to Iraq.

supervision at all stages, \$1.6 billion of oil over a six-month period, with \$933.7 million of the proceeds designated for the purchase of food, medicine and other essential civilian items. This amount was substantially less than the \$2.5 billion recommended by Secretary General Javier Perez de Cuellar as necessary for Iraq to meet essential civilian needs.⁹³ The balance of the oil-sale proceeds were designated, in specific amounts, to cover compensation claims from Kuwait and the cost of border demarcation, weapons inspection and destruction, and U.N. humanitarian assistance and administration.

The Iraqi authorities objected to the various U.N. procedures governing the oil sale, including the depositing of all revenues in an escrow account administered by the United Nations. Iraqi petroleum exports thus have not yet resumed and, regrettably, Iraqi civilians continue to be the innocent victims of the impasse.⁹⁴ The logic behind the strict U.N. control of Iraq's revenue and expenditures clearly is to deny the Iraqi leadership the opportunity to score political points with the beleaguered civilian population by permitting it to control the levers for the distribution of food and other necessities. While this concern is legitimate, the resulting stalemate extracts a high civilian cost.

There were additional indications that Iraq was playing politics with food, at the expense of the civilian population, by reportedly interfering with food distribution efforts by international humanitarian organizations in southern and northern Iraq. In at least one instance in October, a truck carrying food was turned back at an army checkpoint and not allowed to continue to Suleimaniyya.⁹⁵ Iraq's Health Minister Abdul

⁹³ The resolution was passed with the approval of thirteen members; Cuba voted no and Yemen abstained.

⁹⁴ For example, the U.N. Food and Agriculture Organization reported in July that "Iraq's population is facing a massive famine as a result of the war and a poor harvest." (Jerry Gray, "5 Powers At U.N. Decide to Allow Iraqis To Sell Oil," *The New York Times*, August 8, 1991.)

⁹⁵ Patrick E. Tyler, "Baghdad Now Seen Exerting Economic Pressure on Kurds," *The New York Times*, November 6, 1991. The first food diversion by the Iraqi authorities was reported as early as June, when the U.S. Agency for International Development and the U.N. World Food Program said that the Iraqi authorities diverted food bound for Kurdish areas of northern Iraq; other sources said that at least three thousand tons were diverted to Tikrit, the home town of

Salam Saaid told *The New York Times* in early November that food from relief organizations must pass through the government's distribution and rationing system; the policy resulted in the accumulation of about \$4 million worth of food, including infant formula and other food for young children, in warehouses in Baghdad and Jordan.⁹⁶ According to a representative of Catholic Relief Services (CRS), its food-distribution program in churches and mosques in Baghdad and Mosul was barred by the authorities in October.⁹⁷ The CRS representative further charged that 250 tons of food designated for Amara, a city southeast of Baghdad, remained in a warehouse because the authorities would not permit the distribution.

Missile Attacks

Beginning with an initial attack at 2:00 A.M. on January 18, Iraq launched thirty-nine ground-to-ground ballistic missiles into Israel and the occupied West Bank during the Gulf War, killing a total of thirteen people, according to Israeli government statistics. A majority of the missiles were aimed in the vicinity of Israel's largest city, Tel Aviv. Asked about the missile attacks in a CNN interview on January 28, Saddam Hussein commented: "We said that if Baghdad were hit, we would strike Tel Aviv." Iraq's attacks were widely regarded as designed to provoke Israel to join the war and thus precipitate a split among the Arab participants in the allied military coalition.

At dawn on January 18, Iraq also fired a missile at the allied air base in Dhahran in eastern Saudi Arabia, the first of the thirty-seven missiles launched at that country during the war. In late February, Iraq also launched one missile in the direction of Bahrain and one at Qatar, but both fell harmlessly in the Gulf waters; both Gulf states had participated in the war against Iraq and offered their territory as bases for allied air force units. According to statistics from the official Saudi Press Agency, these attacks produced only one civilian fatality — in Riyadh on January

Saddam Hussein. (*Middle East International*, June 14, 1991.)

⁹⁶ Patrick E. Tyler, "Iraq Is Blocking Aid Distribution," *The New York Times*, November 3, 1991.

⁹⁷ *Ibid.*

25 — with an additional seventy-seven civilians injured, most of them slightly.

The possibility of the use of deadly chemical warheads on the Iraqi missiles generated fear among the Israeli and Saudi civilian populations and extensive civil-defense precautions. In the January 28 CNN interview, Saddam Hussein refused to rule out the use of chemical weapons during the war. Asked about Iraq's possible use of chemical weapons against the allied forces, he replied evasively: "I said that we will use weapons that are equivalent to those used against us." A similar reply was given in response to attacks on Israel.

Although Iraqi statements often left the impression that attacks were wholly indiscriminate, in fact not all of its missiles were indiscriminately fired at urban population centers. U.S. Air Force Chief of Staff Gen. Merrill A. McPeak acknowledged this at a press briefing in March: "Some of these were actually launched against military targets. For instance, King Khalid Military City was attacked in the northern part of Saudi Arabia." The majority of the missiles directed at Riyadh also were aimed at military targets, according to a U.S. Army official.⁹⁸ In a July 1991 report, the U.S. Defense Department confirmed that "a number" of the forty-one Iraqi missile attacks on Saudi Arabia were against military targets.⁹⁹

In contrast to the post-war public acknowledgments by the U.S. military that Iraq fired missiles at military targets in Saudi Arabia, Middle East Watch is aware of no public statements by U.S. military briefers or Israeli government spokespersons that described possible military targets in Israel that may have been the object of attack. On January 25, President Bush said in a news conference that the missiles launched at Israel constituted "brutal, senseless, non-military-value attacks on civilian populations." Given Iraq's apparent choice of targets and the limited accuracy of its missiles, most of the attacks on Israel support the president's conclusion.

Although a substantial number of attacks on Saudi Arabia and even some on Israel appear to have been aimed at or near military targets, Iraq's missile campaign as a whole was characterized by serious violations

⁹⁸ David Hughes, "Success of Patriot System Shapes Debate on Future Antimissile Weapons," *Aviation Week & Space Technology*, April 22, 1991, at 90.

⁹⁹ *Conduct of the Persian Gulf Conflict/An Interim Report to Congress*, p. 27-1.

of humanitarian law. First, many of the Iraqi missiles appear to have been directed at civilian targets. The use of Patriot missiles to intercept the Iraqi-modified Scud missiles, as well as the inherent inaccuracy of the Iraqi missiles, often made it impossible to determine exactly where the Iraqi missiles had been aimed. But the repeated launching of relatively inaccurate missiles at targets in Tel Aviv and Riyadh, when a wealth of military targets were available outside these heavily populated areas, suggests a deliberate decision to harm civilians. Rhetoric accompanying the missile attacks suggested that the Iraqi military was at best indifferent to the plight of these civilian populations, if not intent on causing as much damage and suffering as possible. Firing missiles with the purpose of harming civilians flatly violates the customary-law rule that the civilian population shall not be the object of attack.

Second, even many of the missiles that appear to have been directed toward military targets violated the laws of armed conflict because the inaccuracy of the missiles rendered the attacks indiscriminate in the circumstances. The customary-law principle codified in Article 51 of the First Additional Protocol of 1977 to the 1949 Geneva Conventions (Protocol I) prohibits attacks as "indiscriminate" which use "method[s] or means of combat which cannot be directed at a specific military objective" and thus "are of a nature to strike military objectives and civilians or civilian objects without distinction."¹⁰⁰ Among the weapons that the provision was designed to forbid are long-range missiles with rudimentary guidance systems that cannot with any reasonable assurance be directed against a military objective, such as the V2 rockets used by Germany late in the Second World War.

Whether the use of a particular missile is indiscriminate, assuming the object selected for attack is a military target, depends in part on the accuracy of the weapon, the size and location of the military objectives and the target's proximity to civilians and civilian objects. As one respected commentator said, "Those methods and means of combat which would be indiscriminate in a densely populated city, might be lawful in

¹⁰⁰ Although Iraq is not a party to Protocol I, it is bound by the provisions of the Protocol insofar as they have assumed the character of customary international law.

an unpopulated area such as a forest or a desert."¹⁰¹

The Iraqi-modified Scud missiles used against Israel and Saudi Arabia had a circular error probable (CEP) of one thousand meters, meaning that only fifty percent of the missiles launched could be expected to fall within a one thousand-meter radius of the point targeted. Accordingly, while Iraqi missile attacks on the huge Dhahran air base in Saudi Arabia or the Dimona nuclear facility in the northern Negev Desert in Israel could have been expected to be adequately discriminate, the missile attacks on relatively small military targets in Riyadh and Tel Aviv should have been expected to be indiscriminate given the inaccuracy of Iraq's missiles.

It is worth noting that this conclusion in no way depends on an assessment of Iraq's goals in attacking Israel or Saudi Arabia. Just as it would have been illegal for allied forces to harm Iraqi civilians with the aim of encouraging them to overthrow Saddam Hussein, as explained in this volume in the chapter on the United States, so it was improper for Iraq to target or launch indiscriminate attacks against civilians in Israel or Saudi Arabia with the aim of furthering Iraq's military or political objectives.

Third, the missile attacks against both Israel and Saudi Arabia came amid an outpouring of Iraqi rhetoric apparently designed to terrorize the civilian population of those countries. For example, an official Iraqi military communique of January 19 described the previous night's attack on Tel Aviv as "missiles pour[ing] out of the sky, making Tel Aviv and other targets a crematorium." A similar image was conjured up by Saddam Hussein in his April 1, 1990 speech, when he threatened to "make fire eat up half of Israel" if it attacked Iraq. An Iraqi military communique issued on January 23 stated that a purpose of an attack the previous night was "to disturb the sleep of the Zionists and blacken their night." Following a missile launching on February 11, Radio Baghdad said that the strike was intended "to sow death and alarm in the hearts of those who have isolated our women and children in the occupied land." The Iraqi Armed Forces General Command stated that the missiles launched against Israel on February 12 were intended "to spread death and terror among those who terrorized our nation." The language accompanying the attacks on Saudi Arabia, though perhaps somewhat less

¹⁰¹ Michael Bothe, Karl Joseph Partsch and Waldemar A. Solf, *New Rules for Victims of Armed Conflicts* (Boston: Martinus Nijhoff Publishers, 1982), p. 306.

vivid, was comparable. For example, the Iraqi Armed Forces General Command stated that the missiles launched at Riyadh on February 8 were intended "to punish the traitor al-Sa'ud family" and "to disturb the sleep of the tyrants."

These comments, when coupled with ongoing missile attacks against Israel and Saudi Arabia and the ever-present possibility that these missiles might be armed with chemical weapons, appear to have been made deliberately to spread terror among the civilian populations, in violation of the customary-law principle codified in Article 51 of Protocol I. Such spreading of terror is a violation regardless of whether any particular attack was aimed at a military or civilian target.

Finally, Iraq's missile attacks were not lawful reprisals. For those nations like the United States and Iraq that do not subscribe to an absolute ban on reprisals, reprisals are permitted under international law only in response to specified "grave and manifest violations of the law of armed conflict committed by the other Party," if taken for the sole purpose of enforcing future compliance with the laws of war, and if preceded by reasonable warning that retaliation will follow if illegal acts do not cease.

It is utterly implausible, when judged against these criteria, that Iraq's attacks on civilians could qualify as lawful reprisals. Israel did not participate in the hostilities during the Gulf conflict, let alone commit the "grave and manifest" violations of the laws of war against Iraq that might have justified reprisals. In the case of Saudi Arabia, even if Iraq believed that the coalition of which Saudi Arabia was a part was committing illegal acts against the Iraqi population, Iraq had a duty both to detail those alleged violations and to issue a warning to the coalition that reprisals might follow unless the alleged illegal acts ended. No such itemization or warning was ever given.¹⁰²

The Right to Monitor

Independent in-country monitoring of human rights abuses committed by or with the knowledge of the Iraqi government has rarely been possible since the Baath Party's seizure of power in 1968. Under

¹⁰² For more on the Iraqi missile attacks, see Middle East Watch, *Needless Deaths in the Gulf War*, November 1991.

President Saddam Hussein, who assumed full power in 1979, this right has never existed. Independent human-rights organizations cannot function in Iraq, while foreign organizations in the past have faced great difficulty in gaining access to the country and carrying out their work. Various Iraqi exile political organizations and expatriate groups release information about alleged abuses, but typically these materials lack details and methodological rigor, and even their members risked murder at the hands of Iraqi agents.¹⁰³

Following the Gulf War, numerous private Arab, European and U.S. delegations were permitted entry to Iraq to deliver humanitarian aid, assess humanitarian needs, and document the damage to civilians and civilian facilities caused by the allied bombing campaign. These missions supplemented the post-war activities undertaken in Iraq by major international humanitarian and relief organizations such as the United Nations International Children's Fund and the World Health Organization. The office of the U.N. secretary general's executive delegate, Prince Sadruddin Aga Khan, had supervisory responsibility in Iraq for humanitarian matters, under the terms of a Memorandum of Understanding signed by the Iraqi government and renewed in November until June 30, 1992. Five hundred lightly armed U.N. guards were deployed mostly in northern Iraq under the terms of his mandate, but in practice these guards proved ineffective in preventing outbreaks of fighting between government forces and Kurdish guerrillas. Nor did they serve as an early warning system for human rights violations as had been hoped. The best that could be said of the U.N. operation in Iraq is that it provided an umbrella for the activities of a range of Western relief and humanitarian organizations.

These unprecedented post-Gulf war opportunities for access to nongovernmental organizations notwithstanding, Middle East Watch knows of no outside group working in Iraq in 1991 with an organizational mandate or agenda that includes the systematic documentation of human rights abuses committed by the Iraqi government. The Iraqi authorities extended Amnesty International an invitation on April 30, but when Amnesty in a May 8 letter set forth the

¹⁰³ See Middle East Watch, *Human Rights in Iraq* (New Haven: Yale University Press, Human Rights Watch Books, 1990) pp. 18-21.

organization's conditions for a visit to Iraq,¹⁰⁴ the Iraqi government never responded.

Middle East Watch wrote six times to the Iraqi authorities between February and July 1991, requesting permission to visit Iraq to investigate the effects of allied bombing and to visit prisoners of war, but did not receive a positive reply. However, after an informal meeting with Iraqi authorities in September, Human Rights Watch was informed on October 5 by the international affairs director of the Iraqi Red Crescent Society (IRCS) that approval for a visit to Iraq had been granted. On October 24, Human Rights Watch wrote to the IRCS outlining the guidelines that it would expect to follow on such a mission, including unrestricted access to and unaccompanied private interviews with local residents of cities and towns south of Baghdad. The IRCS has yet to respond to this letter.

In the absence of reporting from Iraq by independent international or domestic human rights groups, the dispatches of foreign correspondents provided the only public source of information from inside the country about current human-rights conditions and abuses. The movement of journalists was severely restricted during the Gulf war, and their reports were subject to censorship. However, on May 5, the Iraqi authorities lifted the requirement that the Ministry of Information undertake prior review of foreign journalists' stories,¹⁰⁵ opening a window on Iraq that has enabled greater public awareness of the country's internal affairs than previously had been possible.

In March, the U.N. Commission on Human Rights adopted a resolution that expressed "grave concern at the flagrant violations of human rights by the Government of Iraq." The resolution requested the chair of the Commission to appoint a special rapporteur to conduct a thorough study of human rights violations by the Iraqi government, notably those committed in 1991. Max Van der Stoep of the Netherlands was appointed special rapporteur on June 25, and on August 27 in

¹⁰⁴ Amnesty requested meetings with Saddam Hussein and other government officials, sought access to all areas of the country, and asked for permission to interview and conduct medical examinations of individuals known to be held in custody at prisons and detention centers.

¹⁰⁵ William Drozdiak, "Saddam Returns to Public View, Extols Iraq's Postwar Recovery," *The Washington Post*, May 6, 1991.

Geneva, in his first face-to-face contact with a representative of the Iraqi government, Van der Stoel obtained permission to visit to Iraq. In a detailed memorandum to the Iraqi minister of foreign affairs dated September 16, Van der Stoel laid out numerous allegations of human rights abuses, based on information he had collected from various sources, and requested highly detailed information from the Iraqi authorities.¹⁰⁶ This memorandum, and Iraq's October 25 response, was submitted as the special rapporteur's interim report to the forty-sixth U.N. General Assembly session, which began on November 13. Van der Stoel informed the Iraqi authorities that he wishes to travel to Iraq in early January 1992, prior to submission of a final report to the forty-eighth session of the U.N. Human Rights Commission in February 1992. This would be the first mission to Iraq by an independent human rights investigator.¹⁰⁷ Van der Stoel requested from Iraq's Foreign Ministry "unrestricted access to all parts of the country and to such establishments, centres, compounds, buildings, documents, persons, etc., as may be deemed necessary for me to carry out my mandate, accompanied by such United Nations personnel and necessary advisers as would be required for the fulfillment of my tasks." It is not known whether the Iraqi authorities have agreed to these terms of reference for the mission.

One unexpected byproduct of the turmoil in Iraq in 1991 was the unprecedented exposure of the regime's past human rights abuses. While the abysmal record was generally known, precise information had been difficult to come by. However, during the uprising in March, when rebels seized control of prisons, they captured huge amounts of documentary evidence of past abuses. Following the ouster of the rebels, the exodus of

¹⁰⁶ The memorandum covered arbitrary detention, disappearances, torture, extrajudicial killings, measures used by the government to control civil disturbances, hostage-taking, and the use of civilians as human shields. It also requested information about Iraq's executive and judicial institutions, treatment of ethnic minorities, religious tolerance, and granting of equal access by all segments of the population to food and health care.

¹⁰⁷ Previous efforts to investigate Iraq had been consistently blocked at meetings of the U.N. Human Rights Commission in Geneva. Western nations, including the United States, had been less than enthusiastic prior to the Gulf war about supporting such investigations, but following the Iraqi invasion of Kuwait their attitude changed dramatically.

refugees brought to the world's attention thousands of victims of past repression who were unafraid for the first time in their lives to speak frankly to foreigners. In addition, with the *pesh merga* in control of much of northeastern Iraq, Kurds and foreigners were able to travel extensively through rural Kurdish areas for the first time since the Baghdad regime had mined and sealed them off.

These developments helped to flesh out knowledge of past atrocities, particularly with regard to the government's campaign to empty the Kurdish countryside, the disappearances of scores of thousands of Kurds, and the harsh conduct of Iraq's security agencies throughout the country.¹⁰⁸

At year's end, human rights workers were still sifting through the mounds of documents, videotapes and material evidence captured from Iraqi security agencies. The evidence made the case strongly that past reports of the regime's brutality toward suspected dissidents was, if anything, understated. The discovery of several mass graves — which are due to be analyzed by forensic experts — may finally provide answers to the cases of tens of thousands of Kurds who disappeared during the 1980s.

U.S. Policy

The manner in which the Iraqi government suppressed the Shi'a revolt in the south and the Kurdish revolt in the north produced some of the most extensive and severe violations of human rights in 1991. Although Human Rights Watch is highly critical of the role of the Bush Administration with respect to these abuses, we do *not* espouse the view that military intervention was required for humanitarian purposes. Iraq was not the only country in which it might be argued that such intervention was required during 1991 to avert human rights disasters of great proportion.

Yet there are many arguments against military intervention even in such urgent circumstances. Without attempting to set forth those

¹⁰⁸ See, e.g., "Kurdistan in the Time of Saddam Hussein: A Staff Report to the Committee on Foreign Relations of the United States Senate," November 1991. The report was written by Peter Galbraith, staff director of the Senate Committee on Foreign Relations.

arguments here, it should be noted that the difficulties that attend this question are so great that Human Rights Watch has not yet adopted a policy on this question.

Nevertheless, we think that the Bush Administration deserves criticism because the conflicting signals that it gave probably contributed greatly to the tragedy that took place in Iraq when Saddam Hussein's forces massacred thousands in putting down the revolts and when nearly two million were forced to flee their homes. In part, the Bush Administration's actions may have reflected a lack of sufficient concern for the consequences of the signals it gave; in part it may be due to miscalculation; and in part it may be attributed to primary concern with political considerations unrelated to the well-being of the residents of Iraq. Whatever the reasons, the Administration contributed to the making of a tremendous human rights tragedy.

In other ways as well, despite the Bush Administration's persistent castigation of Saddam Hussein, the protection of human rights within Iraq was not a high priority in 1991. The Administration's pre-war criticism of the Iraqi government's human rights violations focused almost entirely on abuses committed in occupied Kuwait; the previous history of systematic atrocities inside Iraq was barely noted. A similar selective vision could be discerned once the Gulf war ended and the unprecedented uprising against the Baathist regime was met by the government's brutal suppression of the revolt and the unexpected mass flight of civilians. The Bush Administration expressed concern for human rights violations during this period, but acted forcefully only insofar as those fleeing the carnage became allied responsibility as they huddled in winter weather on the Turkish border. Three times as many Kurdish and Shi'a refugees fled to safety in Iran, but the mutually antagonistic relationship between Iran and the United States constrained Washington from either expressing concern about those on the Iranian border or providing much practical assistance. Indeed, for related reasons, very little was said by the Administration about the Iraqi Shi'a, whose suffering paralleled if not exceeded that of the Iraqi Kurds.

The Administration's greatest opportunity to prevent serious abuses by Iraqi forces came in the course of the uprising. Strong warnings reportedly were issued to the Iraqi authorities on March 7 against the use of chemical weapons during the unrest, but the Administration equivocated about the Iraqi military's use of helicopter gunships against civilians. President Bush and Secretary of State James Baker stated in mid-March that the helicopter gunships should not be used, but other

Administration officials gave conflicting signals. In the end, the aircraft were employed to attack rebels and civilians alike without any more forceful reaction by coalition forces. Inquiries to Administration spokespersons about why the warnings had not been enforced met with embarrassed buck-passing and no substantive explanations.

Adding to the controversial nature of this equivocation was the president's call, in two separate speeches on February 15, for Iraqis to revolt: "[T]here's another way for the bloodshed to stop, and that is for the Iraqi military and the Iraqi people to take matters into their own hands to force Saddam Hussein, the dictator, to step aside."¹⁰⁹ This at the time was the Administration's most explicit public statement that Saddam should be overthrown.¹¹⁰ The message, broadcast on Voice

¹⁰⁹ President Bush made this statement in remarks to the American Academy for the Advancement of Science in Washington, and again to an audience at a Raytheon Company factory in Andover, Massachusetts. He was responding to a lengthy statement issued by Iraq's RCC, which was broadcast on Radio Baghdad on February 15. The RCC hinted at a possible willingness to withdraw from Kuwait. Without mentioning Kuwait by name, the RCC announced "Iraq's readiness to deal with Security Council resolution No. 660 of 1990, with the aim of reaching an honorable and acceptable political solution, including withdrawal." The president dismissed the RCC statement as a "cruel hoax" and said there was "nothing new" in the various Iraqi demands included in the statement. ("Baghdad's Offer and Conditions for Ending War Over Kuwait" and "Excerpts From 2 Statements by Bush on Iraq's Proposal for Ending Conflict," *The New York Times*, February 16, 1991.)

¹¹⁰ As early as August 11, 1990, the president had hinted of his desire to have Saddam Hussein ousted: "No, we're not prepared to support the overthrow, but I hope that these actions that have been taken will result in an Iraq that is prepared to live peacefully in a community of nations. And if that means Saddam Hussein changes his spots, so be it. And if he doesn't, I hope the Iraqi people do something about it so that their leader will live by the norms of international behavior that will be acceptable to other nations." ("Excerpts From Statements By Bush on Strategy in Gulf," *The New York Times*, August 12, 1990.) The president said more on August 30, 1990: "Well, it wouldn't disappoint me if the Iraqis got up and said, 'Look, this man is our problem.'" ("Excerpts From President's News Conference on Gulf Crisis," *The New York Times*, August 31, 1990.) After the Gulf War began, the United States insisted that Saddam's removal was not a goal of U.S. policy. On February 1, 1991, the State Department denied that destroying Saddam's regime was a U.S. goal. However, on January 23, President Bush said

of America, suggested to many Iraqis that the United States would support them if they rebelled.

But once the call was heeded and the uprising began, fears of a disintegrating Iraq led the Administration to distance itself from the insurgents, downplaying the significance of the countrywide revolts and spelling out a policy of nonintervention in Iraq's internal affairs.¹¹¹ The Administration's unwillingness to back the insurgents — indeed, its eagerness to dispel the politically embarrassing impression that it had encouraged the uprising — appears to have led it to equivocate on the entirely distinct issue of Iraqi government abuses committed while crushing the insurgency.

A rationale for nonintervention was offered by Italian Foreign Minister Gianni De Michelis, who was interviewed after meeting with Secretary Baker in Washington on March 4. Expressing concern about the "fragmentation" and "Lebanonization" of Iraq, he said, "I am sure Saddam Hussein will go, but my worry is we will not have another friendly regime" in Baghdad.¹¹² In the following days, senior U.S. officials expressed similar sentiments. On March 7, U.S. Secretary of Defense Richard Cheney said, "The breakup of Iraq would probably not be in U.S. interests."¹¹³ The same day, Secretary Baker described the uprisings as "just one heck of a lot of turmoil." Asked if the United States

that the United States would "shed no tears" if Saddam was overthrown.

¹¹¹ However, in August 1990, President Bush had secretly authorized the Central Intelligence Agency (CIA) and other U.S. agencies to undertake covert intelligence operations to destabilize the Iraqi government. (See Middle East Watch, *Needless Deaths in the Gulf War*, November 1991, pp. 84-85.) But destabilization efforts did not meet with success. *The Washington Post* reported that from August 1990 until the end of the Gulf war, "the CIA reported periodically that it had not found substantial or unified opposition to receive such assistance." (R. Jeffrey Smith and John M. Goshko, "U.S. Weighs More Aggressive Campaign to Topple Iraqi Leader," November 25, 1991.)

¹¹² William Claiborne, "Anti-Saddam Uprising Spreads in South Iraq," *The Washington Post*, March 5, 1991.

¹¹³ Lee Hockstader, "Baghdad Warns Insurrectionists 'They Will Pay,'" *The Washington Post*, March 8, 1991.

preferred continued Baath Party rule to an Islamic revolution in Iraq, Baker said: "I'm not going to make a choice because I'm not sure that's what the choices are necessarily. I will say this — we do not want to see any changes in the territorial integrity of Iraq and we do not want to see other countries actively making efforts to encourage changes."

On March 5, Rear Admiral Mike McConnell, director of intelligence for the Joint Chiefs of Staff, acknowledged that "chaotic and spontaneous" uprisings were under way in thirteen Iraqi cities, but stated that Saddam would prevail because of the rebels' "lack of organization and leadership."¹¹⁴ White House spokesman Marlin Fitzwater appeared to discount the insurgents when he stated the same day, "It's not clear to us what the purpose or extent of the fighting is."¹¹⁵ Secretary Cheney, in remarks on March 5, said he expected "a period of instability" in Iraq, but that "it would be very difficult for us to hold the coalition together for any particular course of action dealing with internal Iraqi politics, and I don't think, at this point, our writ extends to trying to move inside Iraq."¹¹⁶ The secretary's comment was reinforced by Marine Major General Martin Brandtner, deputy director of operations for the Joint Chiefs of Staff, who on March 5 ruled out U.S. military assistance to the rebels: "There is no move on the [part of] U.S. forces...to let any weapons slip through, or to play any role whatsoever in fomenting or assisting any side."¹¹⁷

State Department spokesman Richard Boucher explained on March 6: "We don't think that outside powers should be interfering in the internal affairs of Iraq." On March 21, Boucher added that "it's neither our intent [n]or our purpose to try to choose the future leadership of Iraq." Asked whether by doing nothing the United States was giving Saddam a free hand to crush the revolt, Boucher replied, "Well, that remains to be determined." On March 23, President Bush himself publicly back-tracked: "I don't think it is for us to see what will follow on in

¹¹⁴ Nora Boustany, "Republic Guard Reported Battling Insurgents in Iraq," *The Washington Post*, March 6, 1991.

¹¹⁵ *Ibid.*

¹¹⁶ *Ibid.*

¹¹⁷ *Ibid.*

Iraq....I think it would be inappropriate to try to shape or suggest even what government should follow on."¹¹⁸

With one significant exception, this reluctance to take sides in the revolt translated into a refusal to take a strong position about Iraqi government abuses committed in the course of the revolt. The exception was a forceful warning to the Iraqi government against the use of chemical weapons on the insurgents. A senior Administration official told *The New York Times* that Iraqi military communications had been intercepted revealing the imminent use of chemical weapons: "We got an intercept on [March 7] indicating that they were going to drop a gas bomb on a specific place at a specific time....We told them in very explicit terms that this was something that would not be countenanced." The *Times* reported that "[s]enior Iraqi diplomats in Washington and New York were summoned [on March 7] by State Department officials and warned that the United States would not tolerate chemical attacks on rebellious Iraqi civilians."¹¹⁹ One warning was delivered by Thomas Pickering, the U.S. ambassador to the United Nations, to his Iraqi counterpart, Abdul Amir Al-Anbari.¹²⁰ On March 9, Secretary Baker said in Saudi Arabia, in reference to the possible use of chemical weapons, "We think it's important to warn them."¹²¹

However, the Administration was unwilling to move beyond blocking the use of chemical weapons to barring — at least in a consistent manner — other weapons that were being used to slaughter civilians, particularly the helicopter gunships that were being used to fire indiscriminately on fleeing civilians. President Bush said on March 13 that Iraqi helicopter

¹¹⁸ Just a week earlier, on March 17, Secretary James Baker had said: "We would like to see a change in that Government. We've made no bones about it."

¹¹⁹ Patrick E. Tyler, "U.S. Said To Plan Bombing of Iraqis If They Gas Rebels," March 10, 1991.

¹²⁰ Lee Hockstader, "Iraqi Army Struggling In South," *The Washington Post*, March 10, 1991.

¹²¹ *Ibid.*

gunships "should not be used for combat purposes inside Iraq."¹²² The next day, the president obliquely tied the withdrawal of U.S. troops to the use of helicopters by Iraqi forces: "I want to bring [U.S. troops] home, but I'd like to have some security arrangements in place, and...using helicopters...to put down one's own people does not add to the stability of the area...." On March 17, Secretary Baker discussed an allied meeting with ten Iraqi officers in Safwan that day: "We've also said that helicopters should be used for logistical purposes, not for the purpose of shooting and dropping bombs on your own people."¹²³

On March 15, the president's and secretary of state's remarks notwithstanding, U.S. General Norman Schwarzkopf, commander of allied forces in the Persian Gulf, said that Iraqi fixed-wing aircraft would "be subject to being shot down" by coalition forces but said nothing about helicopters.¹²⁴ According to a Pentagon official, Major General Robert

¹²² Dan Balz, "Bush Issues Warnings To Iran, Iraq on Turmoil," *The Washington Post*, March 14, 1991.

¹²³ Eric Schmitt, "Allies Tell Iraq Not To Fly Planes," *The New York Times*, March 18, 1991.

¹²⁴ David Hoffman and Barton Gellman, "U.S. Threatens to Down Any Iraqi Combat Aircraft," *The Washington Post*, March 16, 1991. Among the terms of the March 3 cease-fire agreement was a prohibition against Iraq's use of fixed-wing aircraft. According to the *Post*, "The precise details of the ceasefire agreements have been unclear....U.S. officials had said [on March 14] that, so far as they knew, there was nothing in the provisional cease-fire that explicitly prevents Iraq from using its helicopters in combat against rebellious forces." The *Post* reported:

[White House spokesman Marlin] Fitzwater said the use of helicopters was not specifically addressed in the written agreement secured by Gen. H. Norman Schwarzkopf....According to Fitzwater, Schwarzkopf, when he met with Iraqi military leaders March 3, did discuss informally their intentions to use helicopters for transportation purposes. That was before the large-scale uprisings throughout Iraq had begun. Fitzwater characterized those discussions as outside the written agreement governing the provisional cease-fire and said the reason that U.S. officials concerned themselves at all with Iraqi aircraft was to protect U.S. troops.

(*Ibid.*)

Johnston, General Schwarzkopf's chief of staff, had warned at the March 17 meeting in Safwan that the use of helicopters against the rebels was a "threat to coalition forces" and could lead to U.S. military action against the helicopters.¹²⁵ On March 21, even Pentagon spokesman Pete Williams acknowledged that U.S. policy regarding the use of helicopters was not clear. While admitting that "dozens" of helicopters were being used against the rebels, Williams declined to say whether U.S. forces would fire at these aircraft. He answered affirmatively when asked: "Is our policy somewhat ambiguous?"

The Administration justified distinguishing fixed-wing aircraft from helicopters by the differing threats posed to U.S. forces, without regard to atrocities being committed against civilians. White House spokesman Fitzwater explained that "the planes pose a far more serious threat to U.S. personnel because they fly faster and higher."¹²⁶ Fitzwater also stated on March 26: "We made it clear that we do not believe that they should be flying helicopters or fixed-wing aircraft over the country, that we intended to shoot down fixed-wing aircraft because of the direct threat that they posed to our forces."¹²⁷ Deputy White House spokesman Roman Popadiuk, when asked on March 29 about Kurdish requests for U.S. attacks on the helicopters, responded as if the matter concerned only which side prevailed in the conflict, not whether certain weapons were being used to commit gross abuses: "The issue of internal unrest in Iraq is an issue that has to be settled between the government and the people of Iraq. It's a decision for the people of Iraq to make."¹²⁸ Asked on April 2 why President Bush issued the warning against the use of helicopters if he was not prepared to act on it, the State Department deferred to the White House. Secretary Baker was asked the same question two days later, but he, too, declined to answer. "Well, that's a

¹²⁵ Patrick E. Tyler, "Copters A Threat, US Warns Iraqis," *The New York Times*, March 19, 1991.

¹²⁶ Ann Devroy and R. Jeffrey Smith, "Neutrality in Iraq Reaffirmed by U.S.," *The Washington Post*, March 27, 1991.

¹²⁷ *Ibid.*

¹²⁸ R. Jeffrey Smith, "Administration Officials Still Debate Striking Iraqi Copters Strafing Rebels," *The Washington Post*, March 30, 1991.

question that you can address to [President Bush]," he said.

After Iraqi military forces crushed the uprising, senior Bush Administration officials adopted a self-consciously low public profile about the situation in Iraq.¹²⁹ On April 3, the president picked up the theme that what really was at issue was simply an internal conflict. "I feel frustrated," he said, "any time innocent civilians are being slaughtered. But the U.S. and these other countries with us in this coalition did not go there to settle all the internal affairs of Iraq."¹³⁰ One senior Administration official told *The Washington Post*: "Engaging on this issue gains us nothing....This is not a crusade. It is a somewhat painful acceptance of a certain reality. You manage it in as low-key a way as possible and hope you get through it."¹³¹

On April 13, President Bush emphasized the Administration's top priority: "I want our troops out of Iraq and back home as soon as possible." While condemning the "continuing savagery" of the Iraqi president, Bush reaffirmed the U.S. policy of noninterference in internal Iraqi affairs, with the sole exception of protecting the provision of assistance to internally displaced Iraqis and Iraqi refugees. Rather than condemning the abuses that accompanied the suppression of the uprisings, the president downplayed the significance of the nationwide revolt by describing it as a manifestation of a long-standing internal conflict:

Internal conflicts have been raging in Iraq for many years, and we're helping out, and we're going to continue to help these refugees. But I do not want one single soldier or airman shoved into a civil war in Iraq that's been going on for ages....We will not interfere in Iraq's civil war. The Iraqi people must decide their own political future.

¹²⁹ See, e.g., Ann Devroy and Al Kamen, "Bush, Aides Keep Quiet on Rebels," *The Washington Post*, April 3, 1991.

¹³⁰ Thomas L. Friedman, "Decision Not to Help Iraqi Rebels Puts U.S. in an Awkward Position," *The New York Times*, April 4, 1991.

¹³¹ Ann Devroy and Al Kamen, "Bush, Aides Keep Quiet On Rebels," *The Washington Post*, April 3, 1991.

The Bush Administration continued to worry that it would be held responsible for having encouraged the uprising. In a carefully crafted statement, State Department spokeswoman Margaret Tutwiler said on April 2 that the Bush Administration had "never, ever stated as either a military or a political goal...the removal of Saddam Hussein." She said that although the United States had said that normal relations with Iraq were "next to impossible" while Saddam Hussein was in power, it did not "cal[1] on [the] Iraqi people to put their lives on the line to overthrow the current leadership." It is unclear how the Administration could square this comment with President Bush's entreaty on February 15 for the Iraqi people "to take matters into their own hands."

On April 5, President Bush adamantly denied that the overthrow of Saddam Hussein was a U.S. policy goal. He appeared particularly sensitive to any perception, by Iraqis or others, that the rebels were betrayed by his Administration, stating:

I have not misled anybody about the intentions of the United States of America. I don't think the Shiites in the south, those who are unhappy with Saddam Hussein in Baghdad or the Kurds in the north, ever felt that the United States would come to their assistance to overthrow this man.

The president also said unequivocally, "I made clear from the very beginning that it was not an objective of the coalition or the United States to overthrow Saddam Hussein."

Some senior officials did use forceful language to highlight Iraq's suppression of the uprisings. But their strong words were coupled with equally strong indications of the limits of the U.S. role in post-uprising Iraq. On April 3, for example, President Bush condemned "in the strongest terms continued attacks by Iraqi government forces against defenseless Kurdish and other Iraqi civilians." He called on Iraq "to halt these attacks immediately and to allow international organizations to go to work inside Iraq to alleviate the suffering and to ensure that humanitarian aid reaches needy civilians."

Similarly, Secretary Baker, on April 7 in Turkey, spoke of the "utter brutality" of the Iraqi government and emphasized "Saddam's savage and indecent use of force." He said that "Iraq's forces are killing, threatening, and committing crimes against the Iraqi people." But Baker ruled out any more active effort to stop the slaughter: "We are not prepared to go down the slippery slope of being sucked into a civil war. We cannot police what

goes on inside Iraq, and we cannot be the arbiters of whom shall govern Iraq....We repeatedly said that could only be done by the Iraqi people."

As allied forces assumed responsibility for hundred of thousands of Kurds fleeing northern Iraq to Turkey, Secretary Baker was stronger in indicating that interference by Iraqi forces with international humanitarian assistance in any part of the country would not be tolerated. On April 8, after a brief visit to the hundreds of thousands of Kurdish families on the Turkish mountain slopes, Baker termed their situation a "mounting human tragedy." In a joint statement with the Turkish foreign minister that day, he said:

Once again, the brutality and folly of the Iraqi regime has created yet another gruesome tragedy: hundreds of thousands of refugees and many deaths among Iraqi citizens who sought only their democratic rights. The Saddam regime has not contented itself with more repression but has acted with excessive force, driving its own citizens out of their own land.

Baker also noted: "The international community has once again closed ranks in insisting that Iraq end its repression and allow immediate and unimpeded access by international organizations to all in need through the country."¹³²

With Kurds dying in inclement mountain terrain along the Iraqi-Turkish border, U.S. and allied troops established a 3,600-square-mile "safe haven" in northern Iraq to encourage the Kurds to come down from the mountains. This time, Iraqi helicopters were effectively grounded; under the terms of an agreement with the Iraqi government, Iraqi helicopters could not fly north of the thirty-sixth parallel which marked the southern edge of the security zone.

On June 7, responsibility for relief operations in the zone was transferred to the United Nations High Commissioner for Refugees, and

¹³² U.N. Security Council Resolution 688 of April 5, condemned "the repression of the Iraqi civilian population in many parts of Iraq," demanded that it cease, and insisted "that Iraq allow immediate access by international humanitarian organizations to all those in need of assistance in all parts of Iraq." The resolution only mentioned the Kurdish population and the Kurdish region of Iraq by name. It was passed by a vote of ten in favor, three opposed and two abstentions.

allied troops began to leave. Meanwhile, the United States announced plans for a "residual force" in Turkey to deter possible — but unspecified — Iraqi repression against the Kurds. Pentagon spokesman Pete Williams said on June 25 that the mission of this force would be "to stand by in the area in case there were problems in northern Iraq that required the military action."¹³³ Though again noting that the United States "cannot solve long-term...long-standing problems in the region between the Kurds and the Iraqis, between the Shi'as and the Iraqis," Williams adopted a more forceful stance than during the uprising, stating that there would be "very clear markers laid down to the Iraqis" about their expected behavior.¹³⁴

Similarly, President Bush this time hinted that the United States might consider some sort of unspecified intervention to protect Iraqi civilians "if the situation requires." In a commendably firm, albeit after-the-fact September 16 letter to congressional leaders, the president stated that his Administration

remains concerned about the situation of the Kurds and other internal population groups that have been the object of repressive measures by the Government of Iraq. We have informed the Government of Iraq that we will continue to monitor carefully the treatment of its citizens, and that we remain prepared to take appropriate steps if the situation requires. To this end, an appropriate level of forces will be maintained in the region for as long as required by the situation in Iraq.¹³⁵

The State Department also continued to insist that there was a clear link between "the residual coalition military force" in southeastern Turkey and

¹³³ R. Jeffrey Smith and Barton Gellman, "U.S., Allies Agree To Form Force for Protection of Kurds," *The Washington Post*, June 26, 1991.

¹³⁴ *Ibid.*

¹³⁵ At the time of the president's remarks, there were 36,266 U.S. military personnel deployed in Saudi Arabia, Kuwait and the Gulf. Of these, some 16,000 were navy personnel in the Gulf and surrounding waters and almost 11,000 were army personnel in Saudi Arabia.

the "deterrence" of Iraqi repression, at least in northern Iraq.¹³⁶ The Pentagon had taken the same public position some months earlier. In a July 24 interview, the then U.S. commander of the allied force in Turkey, army Colonel E.E. Whitehead, declined to specify the factors that might trigger allied intervention in northern Iraq, but warned that "we have the aircraft and means, if necessary, to move forces into Iraq."¹³⁷

It soon became apparent that the Administration's stance had more bark than bite. In early October, reports indicated that Iraqi military forces had indiscriminately shelled the northern city of Suleimaniyya, held by Kurdish rebels, and the towns of Kifri and Kalar south of Suleimaniyya¹³⁸ and that thousands of civilians had fled to the mountains.¹³⁹ On October 8, State Department spokeswoman Tutwiler offered only this mild comment: "Iraq must allow the return of refugees to their homes in Suleimaniyya, Kirkuk and other parts of northern Iraq. This is an essential component of restoring stability." The Pentagon was sophisticated about the reports and appeared to excuse the actions of Iraqi forces. Spokesman Williams said that since the Iraqis were "not using any aircraft" to attack Kurdish forces north of the 36th parallel of the safe haven, the actions did not violate cease-fire agreements with the allies.¹⁴⁰ Tutwiler said on October 9 that the previous day "the State Department called in the Chief of the Iraqi Interests Section in Washington...to urge Iraq to cease using artillery against population

¹³⁶ See, e.g., statement of spokeswoman Margaret Tutwiler, September 30, 1991.

¹³⁷ Clyde Haberman, "Allied Strike Force Forms in Turkey," *The New York Times*, July 25, 1991.

¹³⁸ According to *The Washington Post*, "Kurdish sources said the fighting broke out [on October 5] when the guerrillas intercepted an Iraqi military communication ordering the capture of key rebel-held positions in the mountains around Kifri and Kalar. The government reportedly blamed the outbreak on Kurdish rebels." (Jonathan C. Randal, "New Exodus of Kurds Underway," October 9, 1991.)

¹³⁹ Jonathan Randal, "New Exodus of Kurds Underway," *The Washington Post*, October 9, 1991.

¹⁴⁰ "U.S. Assails Killing of 60," *The New York Times*, October 9, 1991.

centers." Little was made at the time or in the following weeks of the fact that up to 200,000 new refugees were created by this and a series of other Iraqi military actions along the internal cease-fire line.

Throughout the year, the Bush Administration showed a preference for highlighting the problems of the Kurds while tending to neglect, almost entirely, the situation of Iraq's Shi'a population, particularly after the March uprising in the south was crushed. This policy was undoubtedly linked to the long-standing fears of Western governments of an Iranian-style revolution in Iraq by Shi'a opposition groups. Following the crushing of the uprising, the same distrust of Iran, a Shi'a-led theocracy, and its religious kin in Iraq, led the allies to concentrate their relief efforts on Kurds fleeing to Turkey. The need to protect relief operations in the north then compounded the discrepancy in treatment.

In many Administration statements, the Kurds were mentioned by name while the Shi'a — in fact the majority religious group in Iraq — were subsumed in descriptions such as "other Iraqi civilians." Some international relief organizations complained that political considerations led the Administration to ignore the pressing need for humanitarian assistance in the war-ravaged Shi'a south. A senior policy analyst at the private U.S. Committee for Refugees said in June that the Bush Administration was spending \$7.60 on each Kurd fleeing toward Turkey but only \$1.00 for each displaced civilian in flight toward Iran.¹⁴¹ "The U.S. has weighed aid in a way that fits into our foreign policy objectives and doesn't take refugee needs into account," he charged. An official with the private International Rescue Committee said it was "the most political situation I've seen."¹⁴²

Andrew Natsios, the director of the Office of U.S. Foreign Disaster Assistance, which was responsible for coordinating U.S. humanitarian assistance in the Persian Gulf, conceded that southern Iraq was neglected: "I just didn't see any purpose of operating there," he admitted in June.

¹⁴¹ Josh Friedman, "U.S. Won't Aid Shiites in Iraq," *New York Newsday*, June 10, 1991.

¹⁴² *Ibid.*

"The crisis is in the north, not the south now."¹⁴³ This disparity between levels of humanitarian assistance to northern and southern Iraq continued throughout the year. State Department spokeswoman Tutwiler said on October 9 that there were approximately 1,339 foreign humanitarian workers in Iraq — including "U.N. guards, humanitarian type of workers, nongovernment organization type of people, Red Cross people" — and that about seventy-three percent of them were in the north. A Geneva-based journalist wrote in December that most relief agencies and the U.N. guards have been unable "to penetrate far into southern Iraq."¹⁴⁴ She noted that the Iraqi authorities were making cynical use of the dire situation in the south to score sanctions-lifting points with international public opinion.¹⁴⁵

The U.S. policy stance, portrayed as one of noninterference in internal Iraqi affairs, was contradicted in part by the Bush Administration's continuing hard line on maintaining international trade sanctions against Iraq until Saddam was ousted from power. Publicly disclosed in incremental fashion, this goal went beyond the objectives of the key post-war U.N. Security Council resolution pertaining to Iraq.¹⁴⁶ Equally significantly, it represented an undeclared about-face

¹⁴³ *Ibid.* The statement ignored the then acute crisis faced by tens of thousands of Shi'a refugees trapped in the southern marshes region by the Iraqi army.

¹⁴⁴ Liesl Graz, "Small victories for the prince," *Middle East International*, December 6, 1991.

¹⁴⁵ "According to serious witnesses, the general food situation in Baghdad has improved; even prices have stabilized, although at a high level. The real problem is in the south of the country, where the regime has few scruples about letting water-borne diseases and lack of medicines become visible enough to the selected visitors to make good copy abroad." (*Ibid.*)

¹⁴⁶ Security Council Resolution 687, which established the Gulf War cease-fire, provides, in the language of a U.S. State Department summary, for the lifting of all sanctions on Iraqi exports "when Iraq agrees to the destruction of its weapons of mass destruction and missiles, provides their locations to the Special Commission, and agrees not to acquire or develop them in the future, and when the Security Council approves the Secretary General's plan for the compensation fund." (U.S. Department of State, *Dispatch*, April 8, 1991.)

from U.S. public statements earlier in the year. On January 24, shortly after the war began, State Department spokeswoman Tutwiler explained U.S. policy this way: "We have been very clear of saying that our goal is not the change of Iraqi government, the change of Iraqi borders, etcetera. This is about withdrawing from Kuwait." Two weeks later, Tutwiler reinforced this statement, denying that the removal of Saddam was a U.S. objective. She asserted on February 11 that such action "would set a new goal, a new objective, and a new mission. And that is not what the United States and the U.N., in these resolutions, have called for." On February 27, when asked about a report that it was U.S. policy to maintain sanctions against Iraq after the war, to make it difficult for Iraq to restore itself unless Saddam Hussein was toppled, Tutwiler said: "I have never heard that mentioned....I have checked in this building [the State Department] and I have checked at the White House. I am not aware of a United States decision to keep an economic embargo."

On April 3, President Bush hinted for the first time at a new link created by the United States between the lifting of sanctions and a change of leadership in Baghdad. Applauding the passage of U.N. Security Council Resolution 687, which established the formal cease-fire with Iraq, the president said:

Certain sanctions will remain in force until such time as Iraq is led by a government that convinces the world of its intent both to live in peace with its neighbors and to devote its resources to the welfare of the Iraqi people. [Resolution 687] thus provides the necessary latitude for the international community to adjust its relations with Iraq depending upon Iraq's leadership and behavior.

The president's hint gathered more substance about six weeks later. On May 8, State Department spokesman Boucher said: "The[re]'ll be no normal relationships with the United States or with any other countries by Iraq as long as Saddam is in power. The President said sanctions are going to stay there as far as we are concerned."

The first full-blown articulation of the U.S. intent to link the lifting of sanctions with the downfall of Saddam came in a May speech by then-Deputy National Security Adviser Robert Gates. In a clear addition to the provisions of Security Council Resolution 687, Gates said that Saddam's "leadership will never be accepted by the world community, and, therefore, Iraqis will pay the price while he remains in power. All possible

sanctions will be maintained until he is gone. Any easing of sanctions will be considered only when there is a new government."¹⁴⁷ The new policy was repeated almost verbatim on May 20 by White House spokesman Fitzwater.¹⁴⁸ The same day, President Bush said: "[M]y view is we don't want to lift these sanctions as long as Saddam Hussein is in power." Despite these statements, State Department spokeswoman Tutwiler insisted on May 21 that, with regard to Iraq, U.S. "objectives and goals have not changed."

Later in the year, in an address to the U.N. General Assembly on September 23, President Bush straightforwardly remarked that "it is the United States' view that we must keep the United Nations sanctions in place as long as [Saddam] remains in power...." The president reiterated this policy on October 1, during a visit by the emir of Kuwait to the White House. In remarks after the meeting, President Bush said: "[W]e reaffirm our view that U.N. sanctions must remain in place against Iraq until a new leadership emerges in Baghdad, a leadership willing to live in peace with its neighbors and its own people."

On November 20, Assistant Secretary for Near Eastern and South Asian Affairs Edward P. Djerejian, in a statement before the House Subcommittee on Europe and the Middle East, said that "we bear no animus toward the Iraqi people who have suffered too long under a brutal regime. They deserve new leadership." He criticized the Iraqi authorities for playing "a shell game with food and medicine," and accused Saddam of a "callous policy of diverting supplies away from those who oppose him."¹⁴⁹ At the same time, Djerejian indicated that the U.S. policy on sanctions would mean continued suffering for Iraqi civilians as long as Saddam rules: "President Bush has made it clear that

¹⁴⁷ Gerald F. Seib, "Bush Plans to Keep Sanctions on Iraq Until Saddam Hussein Is Forced Out," *The Wall Street Journal*, May 8, 1991.

¹⁴⁸ Fitzwater said: "All possible sanctions will be maintained until he is gone. Any easing of sanctions will be considered only when there is a new government. Time is not on Iraq's side so long as Saddam holds onto power."

¹⁴⁹ In a report from Baghdad, *The Washington Post* said that diplomats believe that the import and sale of food in Iraq are controlled by relatives and close associates of Saddam Hussein. (Caryle Murphy, "Iraq, Despite U.N. Sanctions, Is Able to Buy Food, Rebuild," December 10, 1991.)

sanctions will continue as long as the ruthless dictator Saddam Hussein remains in power."

Ironically, the same Administration that rejected the use of sanctions to force Iraq from Kuwait now publicly advocated the continued application of sanctions to bring down Saddam Hussein, with Iraqi civilians "pay[ing] the price," as Deputy National Security Adviser Gates said in May. The policy presented Saddam with no way out: even assuming he complied with the terms of all post-war U.N. resolutions, if the United States had its way with the Security Council, as it consistently had over the previous nine months, the sanctions regime would not be changed as long as he remained in power. Although never stated as such, in reality the policy offered the Iraqi people a devil's bargain: keep Saddam in power and suffer the effect of continued sanctions, or attempt to overthrow Saddam, unassisted, and suffer the consequences should this undertaking fail — as it did in March.

The only other option appeared to be a military coup from within the Iraqi strongman's close-knit circle of aides and relatives, an eventuality which, given the brutal rights record of many of the possible coup-makers, could offer no consolation to the long-suffering Iraqi people. Indeed, this appeared to be the Administration's preferred option. In its dogged determination to see Saddam gone and finally hail the Desert Storm victory as complete, the Administration seemed willing to absolve the many other military officials who have made his abusive reign possible. President Bush himself openly suggested this approach in a July press conference. "We'd be perfectly willing to give the military another chance," he said of an army that has been responsible for the summary murder of tens of thousands of innocent Iraqis, "provided Saddam Hussein was out of there." The strategy was evident in end-of-the-year leaked reports that the Administration was once again contemplating support for a military coup. It will be a tragic irony for the Iraqi people if, after enduring an international war that they had no voice in launching, the ruthless crushing of a popular uprising, and a cruel international embargo, their compensation is to be saddled with a new Saddam.

The Work of Middle East Watch

A substantial proportion of Middle East Watch's resources were devoted to working on different aspects of Iraq's human rights record

during 1991, an allocation of resources remarkable for the fact that the organization has yet to gain official access to the country. In all, seven missions were sent abroad to gather information pertaining to Iraqi government violations.

Four missions were sent to neighboring regional countries: to Jordan in February, to interview refugees from Kuwait; to Kuwait in March, to review the Iraqi occupation record over the previous seven months; through Iran to the Iraqi border region in May, to interview refugees from the uprising; and to Israel in June, to undertake a first-hand investigation of Iraqi missile attacks during the war. Another mission went to Britain, to interview Iraqi exiles. Finally, in the continued absence of official permission, two clandestine missions were mounted inside Iraq itself, in September and December, to the Kurdish rebel-controlled north of the country.

Repeated requests to Baghdad during the year to visit Iraq and Iraqi-occupied Kuwait openly were met by either flat denials or stonewalling. Nor, despite U.S. government sympathy for the objective, was it possible to gain legitimate entry to Iraq through United Nations Security Council Resolution 698, which mandated access by foreign humanitarian organizations. In what appeared to be a breakthrough, on October 5 the Iraqi Red Crescent Society extended an invitation to Human Rights Watch — Middle East Watch's parent organization — to make a visit. However, by the end of 1991, exchanges of letters had still not resulted in Iraqi agreement to the autonomy and confidentiality needed to conduct a meaningful investigation.

The exceptional amount of attention paid to Iraq by Middle East Watch during 1991 was hardly surprising. Even if it had not been for Saddam Hussein's occupation of Kuwait and the Gulf War, the Iraqi regime's atrocious domestic human rights record would have preserved that country's high priority on the Middle East Watch agenda. Reflecting that priority, *Human Rights in Iraq*, originally published in February 1990 and re-released later in a Yale University Press edition, was this new organization's first major report.

Commencing in late 1990, Middle East Watch embarked on a large-scale enterprise aimed at studying the repression of the Kurdish people on a regionwide rather than purely national basis. The twenty-four to twenty-six million Kurds form a significant ethnic group in six regional states: Iran, Iraq, Lebanon, Syria, Turkey and the former Soviet Union. But their political epicenter during this century has usually been Iraq, where they comprise a larger share of the population (about twenty-five

percent) than anywhere else. Previous reports on the mistreatment of Kurds in Turkey have been issued by Helsinki Watch, while previous Middle East Watch prepared reports on Iraq and Syria have contained sections on their Kurdish minorities. But no attempt previously had been made to draw parallels across borders about the treatment of the Kurds.

What altered these plans was the collapse of the March 1991 uprising in Iraqi Kurdistan, spurring a refugee exodus of Biblical proportions and gaining widespread international attention for the Kurds for the first time in their history. Plans by Middle East Watch to produce the regional report were thus dropped in favor of a more historical book of both text and photographs, intended for a wider public. The book aims to highlight cyclical patterns of repression and survival by the Kurds over the centuries. Scheduled for publication in 1992, Human Rights Watch is one of a group of international organizations sponsoring its publication.

Another Human Rights Watch-authored book due for publication in 1992, by Yale University Press, will present a broad overview of rights abuses linked to the Gulf war, much of them committed by Iraq. Most of the research for this book was carried out during the second half of 1991, in New York, Kuwait and Saudi Arabia.

Work undertaken during the past year on the Kurds book included three photographic trips to the region, to Iraq, Iran and Turkey; photo-research in the United States, Britain and France; field research on contemporary conditions in Turkey and Israel (the Israeli population today includes over 90,000 Jews of Kurdish origin); participation in conferences in Stockholm, Athens and Bonn on Kurdish human rights; and extensive archival research in several countries.

Discrete, separate research projects being undertaken by Middle East Watch on the treatment of the Iraqi Kurds by Baghdad are to run side by side with the larger demands of this book. In March, to coincide with a visit to Washington by a delegation of Iraqi Kurdish leaders pleading in vain for U.S. government aid, Middle East Watch gave a briefing on the fate of the more than 100,000 Iraqi Kurds who had escaped an earlier wave of persecution by Baghdad, in 1988, and whose plight in exile in Turkey and Iran had been largely ignored by the West.

Earlier in March, Middle East Watch held a press conference in Washington to alert public opinion to the imminent danger of a massacre of Iraqi government opponents, as Saddam Hussein moved to crush civil unrest in the north and south of the country. Regrettably, those predictions of mass killings of unarmed civilians and the wholesale destruction of property were realized.

In April, a Middle East Watch delegation traveled with a staff member of the Washington-based U.S. Committee for Refugees to Teheran, Qom and refugee camps in western Iran, where they interviewed scores of recently arrived Iraqi refugees about recent and past human rights conditions in Iraq. The refugees provided extensive information about the March 1991 uprisings and their aftermath. They also provided detailed accounts of the government campaign to depopulate the Kurdish countryside during the 1980s, a decade in which over one hundred thousand Kurds disappeared; widespread arbitrary arrests and torture during detention; and the repression of the Shi'a in the south of the country.

Further work on the continued persecution of the Shi'a, including the destruction of religious property, mass arrests and a siege of tens of thousands of people trapped in the southern marshes, was conducted in London during June, through interviews with refugees and exiles, and later by telephone to Iraqi opposition groups based in Iran. The findings of these missions are summarized in the section above on human rights developments and will be the subject of forthcoming reports.

In September, a land-mines expert engaged by Middle East Watch on a three-month consultancy spent much of the month touring the rebel-held zone of northern Iraq. His task was to determine the prevalence of minefields laid by government forces over a period of many years, so as assess their impact on civilians. Preliminary conclusions from this pioneering study, which demonstrated that illegally laid mines may have caused up to ten thousand largely civilian casualties during 1991 alone, and were a serious obstacle to the resettlement of over half a million Kurdish refugees without shelter, were brought to the attention of the United Nations in Geneva, the U.S. Congress and State Department, and international relief organizations. A final report will be issued in early 1992.

As the Kurdish guerrilla organizations and parties regained control over their traditional homeland during the summer, in the shadow of Operation Provide Comfort — the U.S.-led military operation based in Turkey — a growing body of evidence began to emerge on the full extent of the Baathist regime's persecution of the Kurds. Journalists, Western parliamentarians and relief organizations encountered mass graves and huge caches of seized Iraqi secret police documents, photographs and tapes attesting to suspected atrocities committed during what Baghdad had secretly dubbed the *Anfal* (a Koranic expression for the plunder of infidels) campaign of the late 1980s.

As a first step toward obtaining proof of the scale and circumstances of the killings, a joint Middle East Watch and Physicians for Human Rights mission was dispatched to the region in late December. The forensic anthropologists involved were asked to conduct a preliminary investigation of some of the many mass graves recently discovered in Iraqi Kurdistan. Further follow-up work is planned for early 1992.

Much of the Middle East Watch work on Iraq during 1991 stemmed from breaches of international humanitarian law. Prior to the outbreak of hostilities on January 17, the greatest preoccupation had been with the grave violations of the Fourth Geneva Convention committed by Iraqi forces in occupied Kuwait. Testimony by the Middle East Watch staff before the House Subcommittee on Europe and the Middle East on January 8 provided a resume of Iraq's record in Kuwait over the previous five months; it also looked back at the Kuwaiti government's own adherence to universally accepted human right norms prior to August 1990 and addressed U.S. human rights policy in the region after the Iraqi invasion.

On January 18, in the wake of the first Iraqi missile attack against Israel, Middle East Watch reminded all parties to the conflict of their obligations under the Geneva Conventions to respect noncombatants. On March 7, immediately after the cease-fire, it issued another newsletter — its sixth of the conflict on human rights and humanitarian issues — addressing the overlooked issue of the legal requirements governing treatment of prisoners of war, the wounded and the bodies of killed soldiers. An April article in the *New York Review of Books*, based on a recent visit to Kuwait, reconstructed the last terrible forty-eight hours of the Iraqi occupation.

During February, a Human Rights Watch specialist in humanitarian law spent three weeks in Jordan, at the height of the air war, interviewing former foreign residents of Iraq who were attempting to return home after fleeing the conflict. That mission provided part of the raw material for a March 6 newsletter on the bombing of Iraqi cities. It condemned the bombing without warning by the U.S. Air Force of the Ameriyya air raid shelter in Baghdad, in which two to three hundred civilians died. It also provided much of the testimony for a much larger Middle East Watch report, published in November, on civilian casualties resulting from violations by both sides of the Geneva Conventions and other applicable rules of war. Entitled *Needless Deaths in the Gulf War*, this 402-page report was widely quoted and reviewed, both for its groundbreaking legal analysis and for its disclosures about the many instances

in which the public portrayal of the air war by the U.S. government and its allies, as being in strict compliance with legal requirements to minimize civilian casualties, were at variance with the facts on the ground.

Jointly with Physicians for Human Rights, Middle East Watch also conducted research during the year into the misuse of U.N.-mandated economic sanctions against Iraq, with highly adverse consequences for the civilian population.

THE ISRAELI-OCCUPIED WEST BANK AND GAZA STRIP

Human Rights Developments

The year got off to a devastating start for Palestinians, with the imposition on the eve of the Persian Gulf war of a blanket curfew throughout the West Bank and Gaza Strip that was to last six weeks in most areas. By virtue of its comprehensiveness and duration, the curfew was the most severe act of collective punishment of the twenty-four-year occupation. It inflicted lasting harm on the economy and welfare of Palestinians.

After the curfew was substantially lifted in early March, rights conditions improved in some respects and deteriorated in others. The numbers of fatal shootings, administrative detentions, house demolitions, school closings and certain other abuses continued on the downward trend begun in 1990. However, even with this decline, human rights were violated in a widespread and systematic fashion.

The greatest deterioration in the welfare of Palestinians during 1991 was economic. The already depressed Palestinian economy was hard hit by the month-long curfew, new restrictions on working in Israel, a drop-off in funds from abroad due to the Gulf crisis, and the continuing tactics of both sides during the intifada. While economic conditions are not ordinarily a focus of concern for Middle East Watch and the other divisions of Human Rights Watch, they highlight the traditional civil and political rights concerns raised by the arbitrary and discriminatory

manner in which Israeli authorities imposed restrictions with economic consequences for Palestinians.

Another issue of growing importance in 1991 was the killing by Palestinians of persons said to be suspected of collaborating with Israeli authorities. Despite some efforts by Palestinian leaders to curtail this practice, the number of such killings rose for the fourth consecutive year.

This chapter highlights some of the year's trends and developments, but is not an exhaustive survey of human rights conditions in the occupied territories. Among the topics not covered which impinge on civil and political rights are violence committed by settlers, arbitrary methods of land confiscation, restrictions on commercial life, and the building and expanding of Jewish settlements, which continued at an accelerated pace in 1991 in the occupied West Bank and Gaza Strip.

The Curfew during the Gulf War and Related Developments

By confining 1.7 million Palestinians to their homes for a full month during the Gulf war, Israeli military authorities completely shut down the Palestinian economy and education system, and turned day-to-day living into an ordeal. On January 16, the day after the U.N.-imposed deadline for Iraq to withdraw from Kuwait, Israeli authorities imposed a blanket round-the-clock curfew on the Gaza Strip; an identical curfew was imposed on the West Bank the following day.¹⁵⁰ This curfew, like previous ones, did not apply to the more than 100,000 Jewish settlers residing in the Gaza Strip and the portions of the West Bank outside of East Jerusalem.

Israeli authorities justified the curfew as a precaution necessary to prevent an explosion of violence in support of Saddam Hussein,¹⁵¹ at a time when, inside Israel, a state of emergency had been declared, schools and many workplaces were closed, and citizens were on constant alert to retreat to sealed rooms in their homes in the event of Iraqi

¹⁵⁰ Some areas had already been under curfew for days or weeks.

¹⁵¹ Brigadier General Freddy Zach, deputy coordinator of government activities in the territories, as reported in Martin Merzer, "West Bank Curfew: 1.7 Million Trapped," *Miami Herald*, February 4, 1991.

missile attacks.¹⁵² Authorities claimed that Palestinians in the territories, many of whom voiced support for Iraq in its confrontation with the U.S.-led coalition, had been instructed by the Palestine Liberation Organization (PLO) to wage violence against Israel should war break out.¹⁵³

While such security concerns could legitimately be advanced in support of a curfew, the comprehensiveness and duration of this curfew revealed Israel's disregard of its obligations under international law to attend to the welfare of the population under occupation, and to weigh the steps it takes for its own security needs against that obligation.¹⁵⁴ Israel did not, for example, make adequate and timely efforts to lift the curfew to test its continuing necessity, or to allow exceptions for localities that had been relatively quiet during the intifada and presumably posed a lesser threat to security and public order.

Absent such efforts to tailor Israel's security requirements to the most fundamental needs of the occupied population, the curfew increasingly appeared to be an act of collective punishment against Palestinians for their widespread support of Iraq. Curfews imposed or prolonged punitively are, like all forms of collective punishment, absolutely

¹⁵² Iraq's missile attacks on Israel and Saudi Arabia violated the laws of war by targeting civilians indiscriminately. The attacks are discussed in the above chapter on Iraq.

¹⁵³ See, e.g., the interview with Shmuel Goren, coordinator of government activities in the occupied territories, Jerusalem Israel Television Network in Arabic, February 1, 1991, as reported in Foreign Broadcast Information Service (FBIS), February 4, 1991.

¹⁵⁴ This obligation was recognized by the Israeli High Court of Justice beginning with a concurring opinion in 1971 which held: "The occupant is entitled to impose its authority on the population of the territory....But alongside the right of the occupant is its duty to be concerned with the welfare of the population." *The Christian Society for the Holy Places v. The Minister of Defense et al.*, HCJ 337/71, Summarized in English in 2 *Israel Yearbook on Human Rights* (1972), pp. 354-356.

prohibited by international law.¹⁵⁵

During the curfew, work was not permitted, except for certain basic services, such as health care, legal defense, food distribution, and some municipal and relief functions. Even these sectors operated at greatly reduced capacity, since many workers did not receive passes to leave their homes. Medical services, particularly non-emergency and preventive care, were heavily impeded. Outside of some rural areas away from main roads, farmers were unable to work in their fields.

Palestinians without curfew passes could not leave their homes, except for occasional periods of one hour or longer when, on a rotating basis, residents of specified areas were permitted outdoors to shop and run essential errands. All Palestinian schools in the West Bank and Gaza remained closed, even after schools attended by Israeli citizens began to reopen on January 27.

Difficulties mounted for many Palestinians as the curfew continued and they spent their savings and stockpiled goods. While hunger did not become widespread, there were shortages of various staples, and some families, deprived of income, were unable to feed themselves properly. In these respects, Israel violated its duties under Articles 55 and 56 of the Fourth Geneva Convention.¹⁵⁶

¹⁵⁵ See Article 33 of the Fourth Geneva Convention of 1949. Israel has ratified the Fourth Geneva Convention, but maintains that it is not applicable to the territories it has occupied since 1967. Virtually the entire international community, including the U.N. Security Council, the United States and the International Committee of the Red Cross, maintains that Israel is obliged to comply with the Convention in its administration of all occupied territories.

While disputing the convention's *de jure* applicability, Israel has said that it will voluntarily comply with the Convention's "humanitarian provisions." However, it has never specified which provisions it regards as humanitarian, and the Israeli courts have declined to enforce the Fourth Geneva Convention.

¹⁵⁶ Article 55 requires an occupying power to ensure "the food and medical supplies of the population; it should, in particular, bring in the necessary foodstuffs, medical stores and other articles if the resources of the occupied territories are inadequate." Article 56 states:

To the fullest extent of the means available to it, the Occupying Power has the duty of ensuring and maintaining, with the cooperation of national and local authorities, the medical and hospital establishments and services, public

Israel's disregard for its humanitarian obligations was also shown in its failure to provide Palestinians with the same protection from Iraqi missiles that it provided its own citizens. Shortly after Iraq's invasion of Kuwait, Israel began preparing civil-defense measures against possible chemical-weapon attacks, distributing free gas masks and anti-gas protection kits to Israeli citizens living on both sides of the Green Line. Palestinians were informed that they would not receive this equipment.

This policy changed only after Israel's High Court of Justice on January 14 labeled it "patent discrimination" and ordered the immediate distribution of masks to the entire population of the occupied territories. Israel was slow to comply with the order, claiming that it did not have enough masks on hand. Some three weeks later — after eight volleys of Iraqi missiles had landed on Israel and the West Bank — only four percent of the population of the West Bank and Gaza Strip had received gas masks.¹⁵⁷ Nor did authorities provide the occupied territories with the sort of air-raid sirens that inside Israel warned citizens of incoming missiles.

During the curfew, Israel carried out large numbers of arrests. In the first four weeks, 3,005 Palestinians were arrested in the West Bank and 642 in the Gaza Strip, according to the Israeli human rights group B'Tselem. Of those arrested in the West Bank, 1,714 were accused of breaking the curfew; many were held for several days or longer and then released after undertaking to pay stiff fines.

Others were detained on apparently political grounds. Among the prominent cases were philosophy professor Sari Nusseibeh, physician Mamduh al-Aqer and journalist Taher Shriteh, none of whom had been detained before. Their cases exemplify the kind of arbitrariness and ill-treatment to which so many other Palestinians have been subjected when arrested. Of the three, two were never charged at all, and the third was charged only after spending five weeks in detention.

- o Professor Nusseibeh, a political activist who supports the mainstream Fatah wing of the PLO, was arrested on January 27 and accused of

health and hygiene in the occupied territory....Medical personnel of all categories shall be allowed to carry out their duties.

¹⁵⁷ *Jerusalem Post*, February 4, 1991.

providing information by phone to an Iraqi official about where Iraqi Scud missiles had landed in Israel. After thus intimating that Nusseibeh was spying for Iraq, Israeli authorities filed no charges, but instead issued a six-month administrative detention order. They claimed, as they had in defending numerous administrative detentions in the past, that a trial in open court would compromise intelligence sources. Nusseibeh's sentence was later reduced by half, and he was released in April.

- o Dr. al-Aqer was arrested on February 27 and accused of "promoting hostile terrorist activity" and "maintaining connections with terrorist organizations." He spent over five weeks in investigative detention without charge. During this time, he later related, he was prevented from sleeping for a sixty-hour period, forced to stand with a sack over his head and his hands tied behind his back, and confined in a small, closet-like room. Since his release on April 7 he has not been charged.
- o Shriteh, a stringer in Gaza for several Western news organizations, was arrested on January 28 and accused of possessing and failing to report his possession of a fax machine received from a friend described by authorities as an activist in the outlawed Islamic movement Hamas. Shriteh spent over five weeks in investigative detention without charge. During this period, he recounted later, he was confined for eleven days in a sixty-by-thirty-inch room, deprived of food for four days, and denied permission to go to the bathroom for long periods. He was released on bail March 7, and was charged a short time later with "failing to prevent a crime" by not reporting to the authorities that the friend who had given him the fax machine was an alleged Hamas member and with accepting the machine for safekeeping. As of December, Shriteh's trial had not begun, and no court date had been set. Meanwhile, impediments continued to be placed in the exercise of his profession. The Civil Administration wrote to Reuters, Shriteh's principal employer, that his application for a license to possess a fax machine would not be considered as long as the case against him was pending. He also has encountered obstacles each time he requests official permission to travel to Jerusalem, where his employers have offices.

After the Gulf War

The blanket curfew imposed at the outset of the Gulf war began to be lifted gradually in mid-February. In limited numbers at first, schools reopened and workers were allowed to return to their jobs in Israel. On March 3, the daytime curfew was lifted from the entire Gaza Strip for the first time since January 16. However, the nighttime curfew imposed on all 700,000 residents of the Gaza Strip since 1988 remained in effect. The West Bank curfew was lifted with the exception of several towns and villages.

With the lifting of the curfews, Palestinians confronted tough new restrictions on their freedom of movement into and through Israel, including annexed East Jerusalem. These measures dealt a severe blow to the already ailing Palestinian economy.

Before the Gulf war curfew, West Bank Palestinians had been permitted into Israel and annexed East Jerusalem unless explicitly forbidden.¹⁵⁸ After the war, the presumption was reversed. West Bank residents were forbidden to enter unless explicitly permitted.

For Gazans, this reversed presumption had already been in effect since 1989, when military authorities began requiring persons wishing to enter Israel to obtain permits, in the form of magnetic cards. Many men were refused permits either on security grounds or for alleged nonpayment of taxes. In the spring of 1991, the system in Gaza was tightened further when magnetic-cardholders were required to obtain an additional permit to enter Israel.

As a consequence, many workers from the West Bank and the Gaza Strip were forced to abandon jobs or day labor inside Israel and annexed East Jerusalem. On March 8, only 47,200 Palestinian workers entered

¹⁵⁸ Since 1989, the Israel Defense Force has issued to several thousand West Bank residents green identification cards which forbid them from entering Israel, including annexed East Jerusalem. In November 1990, Defense Minister Moshe Arens said he had agreed to issue 2,400 new green cards, bringing the total to 10,000. *Jerusalem Post*, November 20, 1990.

Most green-cardholders are men who have served sentences in prison or administrative detention, for whom the travel restrictions are either an improper *ex post facto* penalty, insofar as they are punishment, or a blanket and arbitrary act of discrimination, insofar as they have a security rationale.

Israel with permits, according to the *Jerusalem Post*. Eight months later, the number of Palestinians working inside Israel had climbed back to 70,000, according to Israeli television. Nonetheless, this represented a loss of 40,000 to 50,000 jobs compared to one year earlier, when Palestinians employed in Israel accounted for one-third of the West Bank labor force and twenty-five percent of its gross national product, and forty percent of the Gazan labor force and half of its gross product.¹⁵⁹

The official justification for reducing the number of Palestinian workers inside Israel was a rash of knife attacks, some fatal, in late 1990 and March 1991, perpetrated by Palestinians on Israeli civilians and soldiers inside the Green Line. The cutback in Arab labor was made more feasible economically for Israel by the entry into the workforce of thousands of Soviet immigrants.

Palestinians without explicit permission to enter Israel were also effectively prevented from traveling between the West Bank and the Gaza Strip, since the connecting roads pass through Israel; and between the northern and southern halves of the West Bank, since the connecting road passes through Jerusalem.

While Israel has the right to restrict entry at its borders, the manner in which the policy has been implemented is objectionable on at least two grounds. First, Palestinians who have not obtained permission to enter Israel are also barred from annexed East Jerusalem, the largest city and *de facto* capital of the occupied West Bank. These Palestinians are thus prevented from reaching not only what the international community considers an integral part of the West Bank, but also such important facilities as the al-Aqsa mosque, Jerusalem's prominent hospitals, and the headquarters of nearly all Palestinian newspapers and professional associations.¹⁶⁰ Second, Israel has restricted entry in an arbitrary and indiscriminate fashion, barring virtually every Palestinian who has ever been arrested on security grounds, including some who had been picked up and then released without charge, as well as others who have never even been arrested.

¹⁵⁹ Brigadier General Freddy Zach, deputy coordinator of activities in the territories, quoted in the *Jerusalem Post*, January 3, 1991.

¹⁶⁰ See al-Haq, "Restriction of Access to and through East Jerusalem," *Human Rights Focus*, April 4, 1991.

Many of those affected by the ban were former administrative detainees who had been accused of political activism in the PLO but never of having committed acts of violence. These included professors, journalists and other professionals. Since the reason offered for the new restrictions was to prevent knife attacks on Israelis, the inclusion in the travel ban of people with no history of violence was clearly arbitrary. That someone has been interned without trial or meaningful avenue of appeal, or has been picked up and then released without charge, should provide no legitimate basis for restrictions on their freedom of movement.

The arbitrariness of the restrictions is compounded by the limited means provided to contest them. Persons whose movements have been restricted may file a written "objection" with the Civil Administration, but are offered no opportunity for a hearing and, if the restrictions are upheld, no specific reasons why they have been imposed. They have no recourse to the courts other than appealing to Israel's High Court of Justice, which gives wide discretion to the judgment of the Israel Defense Forces (IDF) in deciding which security measures are necessary. Even in cases in which the authorities have rescinded travel restrictions, it has taken as long as six months from the time of filing the objection to obtain renewed permission to travel, according to lawyer Tamar Pelleg of the Association for Civil Rights in Israel.

The restrictions have been disastrous for the Palestinian economy, which during twenty-four years of occupation has grown dependent on exporting labor to Israel, partly as a result of Israeli policies. Workers who lost their jobs had few readily available alternatives in the bleak post-war economy, and unemployment grew rapidly. Israel's failure to provide relief to the affected population arguably violates Article 39 of the Fourth Geneva Convention, which states in pertinent part, "Where a Party to the conflict applies to a protected person methods of control which result in his being unable to support himself, and especially if such a person is prevented for reasons of security from finding paid employment on reasonable conditions, the said Party shall ensure his support and that of his dependents."

As Palestinian employment inside Israel declined, Israeli authorities in 1991 announced several measures to stimulate the economy in the

territories.¹⁶¹ While these may strengthen the private sector in the West Bank and Gaza Strip over time, this policy cannot compensate in the near-term for the pauperization of thousands of Palestinians due, among other factors, to the sudden loss of jobs in Israel.

The new restrictions on entry into Israel exacerbated the obstacles surrounding family visits for Palestinians being held in prisons inside Israel, although the problems were gradually resolved during the autumn months. After the Gulf war, the same the restrictions on crossing the Green Line required visiting family members to obtain permits from the Civil Administration. In September, visits to prisons other than the Ketsiot Detention Center¹⁶² resumed after Israel dropped the permit requirement for relatives as long as they traveled to and from the prisons in buses operated by the International Committee of the Red Cross (ICRC).

In October, inmates at Ketsiot began to receive family visits for the first time since its opening three and-a-half years earlier. The visits had been prevented by a standoff between the IDF and the Palestinian leadership over the requirement that family members obtain permission from the occupation authorities to travel to Ketsiot, which is in a closed military zone inside Israel. Palestinians insisted that family visits to prisoners should take place as a matter of right, and objected to being forced to submit to an application process involving unrelated conditions. These processes, also endured by Palestinians seeking permission to do such things as travel abroad or obtain a drivers license, usually entail

¹⁶¹ See "Israel Begins Plan for Arab Business," *The New York Times*, December 1, 1991.

¹⁶² Ketsiot, which Palestinians call Ansar III, is the largest detention facility of any kind in Israel or the occupied territories. It was built in 1988 at a remote location in the Negev desert near the Egyptian border, to help to accommodate the thousands of Palestinians arrested since the start of the intifada.

Ketsiot's population consists of Palestinian residents of the occupied territories who have been arrested on security grounds. Authorities at Ketsiot gave its population on October 9, 1991 as 5,897, composed of 466 administrative detainees, 4,640 sentenced prisoners and 791 awaiting trial, including both those not yet charged and those ordered held until the end of trial proceedings. These figures represent a decline from late March, when Ketsiot held over 7,000 inmates.

long waits, the approval of numerous agencies, including the security services, and proof that all taxes have been paid.

The impasse was broken when Palestinians and the IDF agreed that the ICRC would act as intermediary between the families and the Civil Administration, so that permits for visits would be granted without the relatives having to apply directly to the authorities. As with other prisons inside Israel, families travel back and forth on ICRC buses.

Middle East Watch holds Israeli authorities responsible for the above-mentioned obstacles to family visits to Palestinian prisoners held in Israel, since the problem stems from Israel's transfer of well over half the Palestinians it holds to facilities inside the Green Line, in violation of the Fourth Geneva Convention. Article 76 of the Convention requires that residents of occupied territories detained or imprisoned serve their sentences in the occupied territory.

Excessive Force and Accountability for Abuses

While the post-war period began with a tough new policy on freedom of movement, the incidence of certain other types of human rights abuses continued to decline. During the first eleven months of 1991, security forces shot dead eighty-seven Palestinians, according to the Israeli human rights group B'Tselem. While this number is higher than during any year before 1988, it represents a monthly average that is less than half the average for the thirty-seven months of the Palestinian uprising through the end of 1990.

Though lower than in previous years, the number of Palestinians wounded or killed continues to include many avoidable casualties that are the foreseeable result of Israeli policies. These policies include open-fire orders that are excessively permissive in that they do not conform to internationally accepted principles of permitting the use of lethal force only to counter a mortal threat and only when no lesser means are available.¹⁶³

After four years of the intifada, the IDF continues to use live ammunition in riot-control situations, instead of relying on less lethal means of quelling unrest, and conventional riot gear such as protective shields. Large numbers of Palestinians continue to sustain bullet wounds

¹⁶³ See Middle East Watch, *The Israeli Army and the Intifada: Policies that Contribute to Killings*, 1990.

in the upper parts of their bodies despite open-fire orders requiring soldiers to aim at the legs. The IDF also seemed to step up more pinpointed actions, such as using undercover units to capture suspected activists,¹⁶⁴ and placing sharpshooters authorized to shoot stone-throwers on roads where drivers were considered to be at risk of such attacks.¹⁶⁵ Moreover, a continuing laxness in investigating and disciplining soldiers encouraged them to believe that they are unlikely to face meaningful punishment if they exceed their orders.

The decline in fatalities reflects mainly a drop in the level of confrontations between Palestinian youths and Israeli soldiers, rather than greater restraint on the part of soldiers in opening fire in given situations, or a tightening of the standing open-fire orders. Some observers attribute the reduction in part to a policy implemented in 1990 under newly installed Defense Minister Moshe Arens to reduce the amount of contact between IDF troops and the Palestinian population. Under this strategy, troops cut back their routine patrols through populated areas to reduce the opportunities for the kind of stone-throwing confrontations that so often ended in gunshot injuries and deaths.

However, when confrontations occurred, the IDF continued to respond with excessive force. One particularly permissive aspect of the open-fire orders concerns firing live ammunition at suspects who ignore orders to halt. The definition of "suspect" in the orders is sufficiently broad to include persons who are posing no imminent physical danger to

¹⁶⁴ The existence of undercover units, which have been active in quelling the intifada since 1988, was confirmed by the IDF in a June 21 broadcast on Israeli television. They have been accused of deliberately executing a number of wanted activists, as discussed below.

¹⁶⁵ According to *Haaretz* of December 21, 1990, the IDF judge advocate-general asserted that the sharpshooters were following the standing orders for opening fire, shooting only when there is a threat to human life or when a suspect disobeys orders to halt and tries to flee. (See FBIS, December 28, 1990.) Nevertheless, the deployment of sharpshooters with live ammunition appears to be a disproportionate use of force. A December 13, 1990 *New York Times* story said the army acknowledged that while there had been many injuries, not one Jewish driver had been killed as the result of a hurled stone since the Palestinian uprising began three years earlier. Joel Brinkley, "Israel Sends Snipers To Stop Car Stonings."

others.

In May 1991, the Ramallah-based human rights organization al-Haq charged that of the twenty-nine Palestinians it said had been shot and killed by security forces during the first quarter of 1991, ten — thirty-four percent — had died while fleeing from Israeli soldiers. Al-Haq identified "two dominant patterns of the use of lethal force against fleeing suspects: (a) opening fire upon a person, apparently simply because he/she runs away from military personnel; (b) opening fire upon persons suspected of stone-throwing."¹⁶⁶ To this may be added several youths who were injured or killed by live ammunition when or shortly after they were spotted writing political slogans on walls.

There have also been allegations by al-Haq and other human rights organizations that Israeli security forces have ambushed and deliberately executed a number of wanted suspects whom they could have captured.¹⁶⁷ Despite Israeli denials the army's open-fire orders, at the very least, amount to a "wanted-dead-or-alive" policy toward certain categories of unarmed fleeing suspects.

Even those liberal orders may have been routinely exceeded in some units with the approval of the commanders, as testimony in a recent court-martial suggests. Contrary to the IDF's claim that undercover units must follow its standard open-fire orders, a member of an undercover unit testified in October 1991 that his commander had instructed soldiers to aim at the midsection of suspects, in defiance of orders to aim only at the legs. The commander, a lieutenant colonel, is facing charges in connection with the killing of a youth in Gaza. The trial was continuing as this report went to press.

The fatal consequences of liberal open-fire orders are compounded by the IDF's laxness in investigating and punishing soldiers who violate those orders. In 1991, the military justice system continued to treat abuses by security forces with leniency: few soldiers who injured or killed Palestinians in questionable circumstances were court-martialed, and even fewer received prison sentences.

¹⁶⁶ Al-Haq contended that soldiers often violated their written orders to shout a warning to halt and then fire a warning shot before opening fire at fleeing suspects. "The Illegal Use of Lethal Force against 'Fleeing Suspects,'" *Human Rights Focus*, May 1, 1991.

¹⁶⁷ See al-Haq, *Nation under Siege*, 1990, pp. 60-67.

The Israeli criminal justice system once again showed greater willingness to expose abuses by security forces than to mete out appropriate punishments. Nowhere was this better illustrated than in the vigorous inquest into the October 8, 1990 killings at the Temple Mount/Haram al-Sharif in Jerusalem. After seven months of hearings into that event, presiding judge Ezra Kama released a report in July which blamed police officers for using excessive force at several specific moments that morning against those gathered in the sanctuary.¹⁶⁸ Despite the detailed evidence produced by the judge, not a single policeman or officer involved in the incident has been charged or punished. In a letter dated October 20, 1991, a Justice Ministry spokesman told Middle East Watch that the State Attorney's office was still reviewing the report of Judge Kama.

Similarly, military courts during the past year declined to give prison sentences to the first two high-ranking officers to be convicted for intifada-related abuses. Colonel Yehuda Meir was convicted of aggravated battery — an offense which carries a maximum sentence of twenty years' imprisonment — for ordering his subordinates to arrest, tie up and severely beat a group of twelve West Bank Palestinians in 1988. While calling his orders "patently illegal," the court sentenced him to only a demotion, to the rank of private. Colonel Yaakov Sadeh, who was convicted of negligently causing the death of a Gaza youth he shot during a disturbance in 1989, was given a suspended six-month sentence and a reprimand.

As this report went to press, two court-martials of lieutenant colonels were in progress. In the first, cited above, the commander of an undercover unit is charged with manslaughter for giving his unit illegal open-fire orders. The second involves an officer in charge of a wing of Ketsiot detention center who is charged with beating inmates.

Fortunately, a bill to amnesty soldiers outright for human rights abuses committed during the early months of the intifada did not advance in the Knesset, after encountering opposition from Defense Minister Moshe Arens and Justice Minister Dan Meridor. Such an amnesty would violate Israel's obligation to punish those responsible for gross abuses.

¹⁶⁸ The inquest by Judge Kama was a vast improvement over the exculpatory report on the events issued October 26, 1990 by the government-appointed Zamir commission.

Elsewhere, the rule of law was undermined by inflammatory statements made by Police Minister Ronnie Milo and other officials urging Israeli policemen and civilians to take the law into their own hands. In March, after a number of knife attacks by Palestinians had left seven Israelis dead and several wounded, Milo declared: "If any Israeli, whether policeman or not, sees someone with a knife trying to kill, he should shoot....If in the past there were doubts and fears [about shooting to kill], they have no place today."

Milo's incitement to shoot to kill encourages Israeli civilians and police officers to ignore lesser means when they, too, may be effective in stopping an attack, such as striking an assailant with a rifle butt or firing to wound or disarm him. In this respect Milo's position contradicts both Israeli police regulations and the applicable law. Israeli police regulations require an officer who fires a gun to show that "no other means of force was available to ensure implementation of the mission and that the nature of that mission justified the use of this extreme means." For civilian use of firearms, the applicable section of the penal code is Israel's "law of necessity," which states:

a person may be exempted from criminal responsibility for any act or omission if he can show that it was done or made in order to avoid consequences which could not otherwise be avoided and which would have inflicted grievous harm or injury on his person, honor or property or on the person or honor of others whom he was bound to protect or on property placed in his charge, provided that he did no more than was reasonably necessary for that purpose and that the harm caused by him was not disproportionate to the harm avoided.¹⁶⁹

While somewhat open-ended, this statute makes clear that a civilian's gunfire must adhere to the dual principles of necessity and proportionality.

Milo's endorsement of shooting to kill has not led to any revision of the applicable laws or regulations. Nevertheless, his comments, which he has neither retracted nor adequately clarified, constitute an endorsement of lawlessness by the country's top law enforcement official.

¹⁶⁹ Section 22 of the Penal Law, 1977.

Abuse during Interrogation

Torture is common during the interrogation of Palestinian security suspects by Israel's General Security Service (Shin Bet or GSS), as was persuasively documented in reports issued this year by B'Tselem and Amnesty International. For those who are brought to trial, abuse during interrogation is followed by systematic failure to accord a serious hearing to any claim that a confession had been improperly coerced.

Available data is insufficient to determine whether the level of abuse during interrogation increased or decreased in 1991 compared to earlier years. However, several dramatic developments placed torture on the public agenda inside Israel, beginning with the release of the B'Tselem report in March. B'Tselem reported:

Virtually all our sample [of forty-one detainees from the West Bank and Gaza Strip] were subject to: verbal abuse, humiliation and threats of injury; sleep and food deprivation; hooding for prolonged periods; enforced standing for long periods, sometimes in an enclosed space, hands bound behind the back and legs tied; being bound in other painful ways (such as the "banana" position); prolonged periods of painful confinement in small, specially constructed cells (the "closet" or "refrigerator") and severe and prolonged beating on all parts of the body (resulting sometimes in injuries requiring medical treatment).¹⁷⁰

Amnesty International reported similar abuses, charging that "torture or ill-treatment seem to be virtually institutionalized during the arrest and interrogation procedures preceding the detainee's appearance before a military court."¹⁷¹ Both reports provided evidence to support the kinds of allegations that have been persistent since the early years of Israel's occupation of the West Bank and Gaza Strip.

¹⁷⁰ *The Interrogation of Palestinians during the Intifada: Ill-treatment, "Moderate Physical Pressure" or Torture?*, March 1991, p. 106.

¹⁷¹ *Israel and the Occupied Territories: The Military Justice System in the Occupied Territories: Detention, Interrogation and Trial Procedures*, July 1991, p. 45.

The B'Tselem report prompted the formation of various governmental committees to investigate its allegations. To date, however, those committees have yet to yield tangible results. The committee formed by the IDF, the only one to publicize its findings so far, helped to initiate several investigations of IDF interrogators for alleged abuses, but made no recommendations that would rein in agents of the Shin Bet, who are primarily responsible for the abuse.

In July, the International Committee of the Red Cross, in a rare departure from its policy of communicating privately with governments, went public with its concerns about the treatment of detainees. "In view of the lack of response to previous representations," the ICRC announced in a July 16 press release that it was submitting "a further report to the highest authorities of the State of Israel, on the situation of detainees undergoing interrogation." The ICRC urged Israel "to give special attention" to this issue and "to implement the recommendations it has already made."

Israel's courts in 1991 deliberated on several important cases involving torture. In a challenge to Shin Bet practices in general, an alleged torture victim from the Nablus district asked the High Court of Justice to order the General Security Service to revise its interrogation methods. In particular, the petition asked the court to declare illegal the endorsement by the government in 1987 of the GSS use of "moderate physical pressure" when interrogating security suspects — a practice approved in general terms by the government-appointed Landau Commission in a 1987 report and formally endorsed by the government; the classified appendix to the report outlined more specifically the approved methods. The lawyer for the petitioner, Avigdor Feldman, submitted the B'Tselem report as supporting evidence. In November, the Shin Bet replied to the petition, claiming that it would be impossible to halt "terrorist" activities in the territories "without the security elements being able to use, in the appropriate circumstances and within the legal limits, the permissible actions [of moderate physical pressure] recommended by the Landau Commission." The case is pending.

In an encouraging development, the Knesset ratified the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (adopted by the U.N. General Assembly in 1984), along with

three other major human rights conventions.¹⁷² The Torture Convention defines torture as "any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession." The General Security Service, in responding to the petition before the High Court of Justice, denied that the forms of "moderate physical pressure" approved in the classified annex to the 1987 Landau Commission report amounted to torture. However, the Convention's definition of torture is easily met by several of the routine methods of pressuring suspects that were documented in 1991 by B'Tselem and Amnesty International.

In a positive step for accountability within the Shin Bet, two interrogators received six-month sentences for negligently causing the death of suspect Khaled Sheikh Ali during interrogation in 1989. The sentences, which were the outcome of a plea bargain in which the charge of manslaughter was dropped, were deplorably short. Nevertheless, they are believed to be the first time that Shin Bet agents were imprisoned for abuses. The sentences were upheld by Israel's Supreme Court.

Detentions, Deportations and House Demolitions

The number of Palestinians in administrative detention — internment without charge or trial — declined during 1991 to 457 as of October 22, according to the office of the IDF spokesperson.¹⁷³ For much of the first two years of the intifada, the number exceeded two thousand; by mid-December 1990, however, it had declined to 910, according to the IDF Judge Advocate-General.

Despite the welcome drop in the number of administrative detainees, Israeli use of administrative detention does not conform to the limited use of this extrajudicial measure permitted by the Fourth Geneva Convention. Article 42 of that Convention authorizes the internment of individuals "only if the security of the Detaining Power makes it absolutely necessary." The authoritative commentary to that Convention

¹⁷² They are the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, and the U.N. Convention on the Rights of the Child.

¹⁷³ Cited in B'Tselem, *Human Rights Violations in the Territories 1990-91*.

stresses the exceptional character of that measure.¹⁷⁴

Under Israeli law, military authorities have the power to place individuals under administrative detention for renewable twelve-month periods. Most orders are initially of shorter duration. Probably the longest-held detainee at present is Sami Samhadana of the Gaza Strip who, if he serves out his current term in Ketsiot, will have spent a total of five and a half years in administrative detention since 1985, with only brief intervals outside. The Association for Civil Rights in Israel (ACRI) has filed a suit with the Israeli High Court of Justice challenging Samhadana's lengthy internment without charge.¹⁷⁵

The total number of West Bank and Gazan Palestinians incarcerated by Israel by all means — both administratively and on criminal charges — appears to have declined slightly during 1991 from more than 14,000 earlier in the year to approximately 13,000 in September, according to official sources. If considered as a separate country, the occupied Gaza Strip and West Bank (excluding annexed Jerusalem) would have an incarceration rate of roughly 750 per 100,000 Palestinian residents, which is higher than any country that issues such statistics.¹⁷⁶ The vast majority of these inmates are being held not for common crimes but for offenses or accusations that Israel considers security-related. Within this population, Middle East Watch views as political prisoners those in administrative detention and those who have been arrested or convicted on charges of belonging to, or serving, any outlawed political organization, including the PLO, as long as they have not been convicted

¹⁷⁴ "The Convention stresses the exceptional character of measures of internment and assigned residence by making their application subject to strict conditions....[O]nly absolute necessity, based on the requirements of state security, can justify recourse to these two measures, and only then if security cannot be safeguarded by other, less severe means. All considerations not on this basis are strictly excluded." *Commentary*, IV Geneva Convention, p.258.

¹⁷⁵ At one point, the IDF proposed to release Samhadana if he agreed to stay abroad for three years. He refused. ACRI's petition is pending.

¹⁷⁶ By comparison, Northern Ireland's rate of 120 per 100,000 in 1989 made it one of the few places in Western Europe to exceed 100 per 100,000. The U.S. rate that year was 426 per 100,000. Marc Mauer, "Americans behind Bars: A Comparison of International Rates of Incarceration," The Sentencing Project, Washington, D.C., 1991.

of individual responsibility for activities directly linked to violence.

Military authorities continued to demolish the homes of the families of Palestinians suspected of committing grave, politically motivated acts of violence, nearly always before the suspect had been tried or convicted. As with other extrajudicial measures, families may file an appeal before Israel's High Court of Justice, but such appeals rarely succeed, since the court will not scrutinize the IDF's assessment of security needs, but examines only narrow issues of procedure and whether the military officials exceeded their broadly defined authority.

In 1991, the number of demolitions declined somewhat compared to previous years. From January until October 18, forty-eight houses were totally demolished as punishment for security offenses, five were partially demolished, thirty-five were totally sealed and thirteen were partially sealed, according to the human rights organization al-Haq.¹⁷⁷

Middle East Watch until recently had been unaware of any country besides Israel that punished the families of suspected offenders by demolishing their homes. This year we ascertained that Israel shares this distinction with Iraq, where the regime of Saddam Hussein has been known to demolish the homes of families of suspected dissidents.

In 1991, the practice of deporting suspected activists was revived, despite vigorous international opposition. No deportations had been carried out since the first two years of the intifada, when fifty-eight Palestinians were expelled on security grounds. In January 1991, four Gazans were deported to Lebanon after being accused of inciting violence against Jews, and another four were deported on the same grounds in May. In both instances, the arrests and deportation orders came after a rash of stabbings inside Israel by Palestinians, but in neither case did the authorities accuse the deportees of direct involvement in the stabbing

¹⁷⁷ Many other houses were demolished not for security offenses but, rather, on the grounds that they had been built without the required permit. Such permits are inordinately difficult for Palestinians to obtain, especially when compared to the ease with which Jews are able to build or expand settlements in the West Bank. See B'Tselem, "Limitations on Building of Residences on the West Bank," August 1990, and Database Project on Palestinian Human Rights, "Israel's War by Bureaucracy," August 1988.

incidents.¹⁷⁸

On a positive note, one Palestinian deported in 1985 was permitted to return to the West Bank in September 1991 as part of a deal between Israel and Palestinian groups to obtain the remains of an Israeli soldier killed in Lebanon several years ago.

Family Reunification

The expulsion of Palestinians related to legal residents of the territories but who lack Israeli-issued residence papers themselves became a contentious issue again in 1991 after the practice was halted in early 1990. Affected are Palestinians who have been unable to obtain residency permits which would allow them to live legally in the territories with spouses or children who are legal residents. The vast majority of Palestinians who apply for permanent residence in the territories on family-reunification grounds are turned down by the Israeli authorities, including those filed on behalf of immediate relatives.¹⁷⁹ Because of the cost, conditions and uncertainties of the application process, many Palestinians without residence permits do not bother to file an application but instead enter on a short-term visitor's visa and then stay on illegally after the visa expires, risking expulsion.

Palestinians in this predicament include those who were outside the occupied territories when Israel conducted a one-day census of the area shortly after the June 1967 war, and refugees who grew up in Jordan or elsewhere and then married residents of the occupied territories. Also affected are the children of one spouse who is a legal resident and one

¹⁷⁸ The four Gazans deported in January were accused of being active in the militant Islamic organization Hamas, which had called for lethal attacks against Israelis and had claimed responsibility for the fatal stabbing of three Israelis in Jaffa on December 14, 1990. The four deported in May were accused of being active in the mainstream PLO wing Fatah and, according to Defense Minister Moshe Arens, of stirring up the atmosphere "that leads in the end to murder." Thomas L. Friedman, "U.S. Condemns Deportations in Gaza," *The New York Times*, March 26, 1991.

¹⁷⁹ Al-Haq reported in 1990 that seventy-five percent of applications that failed involved residents applying to be reunited with their spouses and/or children. Al-Haq, *The Right to Unite: The Family Reunification Question in the Palestinian Occupied Territories: Law and Practice*, 1990, p. 10.

who is not, because such children are not automatically given resident status.

In the fall of 1991, two Israeli human rights organizations, B'Tselem and the Association for Civil Rights in Israel (ACRI), accused the military authorities of breaking a pledge made in the spring of 1990 to grant "non-resident" Palestinian wives and children longer-term visitor visas so that they could remain with their Palestinian husbands in the West Bank and Gaza. The IDF defended its actions by explaining that the more liberal procedures it announced in 1990 applied only to wives and children already in the territories, and not to those who entered the territories subsequently. ACRI and B'Tselem presented the names of more than twenty "non-resident" women who had been ordered to leave, and filed a suit in Israel's High Court of Justice challenging the restrictive reunification policy. That suit is pending.

In expelling non-resident Palestinians, Israel claims that it is exercising its sovereign right to deport illegal aliens. Middle East Watch disputes this claim; Israeli policy in this area, both in the arduous application process and the rejection of the vast majority of reunification requests, including those made to reunite immediate family members, violates the occupying power's obligations under Article 27 of the Fourth Geneva Convention to respect the "family rights" of the protected population "in all circumstances." Middle East Watch believes that family rights encompass, at the very least, the right of husband and wife and dependent children to live together, although it is not explicitly stated in the Convention.¹⁸⁰ Insofar as Israel refuses to grant residency rights to former long-time residents of Israel or the occupied territories, we also maintain that the Israeli policy violates the right of Palestinians to enter their "country," as affirmed in Article 12 of the International Covenant on Civil and Political Rights; there is no reason to believe that the framers of that covenant meant to exclude from this right persons residing in occupied or administered territories.

¹⁸⁰ The authoritative commentary to the Fourth Geneva Convention develops the concept of family rights, but stops short of affirming a family's right to live together: "Respect for family rights implies not only that family ties must be maintained, further that they must be restored should they have been broken as a result of wartime events." pp. 202-203. For more discussion of the relevant international law, including the right to leave and return to one's country and the rights of the child, see al-Haq, "The Right to Unite," 1990, pp. 20-26.

Israel's restrictive policy on family reunification also exacerbated the problems faced by Palestinians who fled or were forced to leave Kuwait during Iraq's occupation and the post-liberation period, as described in the chapter in this report on Kuwait. Since the start of the Gulf war, Israel has admitted some thirty thousand West Bank and seven thousand Gazan Palestinians who had been living and working in Kuwait and Saudi Arabia.¹⁸¹ However, an indeterminate number of Palestinians residing in Kuwait who were born either in British Mandate Palestine or the Gaza Strip, as well as their children, could not enter the occupied territories on the grounds that they lacked residence papers. Most Kuwaiti Palestinians who have Jordanian passports fled to Jordan; of these, only a portion wished to reside in the West Bank or Gaza Strip but are prevented from doing so, while many preferred to remain in Jordan. But an estimated 23,000 to 25,000 Palestinians of Gazan origin faced possible expulsion from Kuwait with nowhere to turn because Israel would not permit their return to Gaza, either because their Israeli-issued residence papers had expired or because they had left Gaza prior to the 1967 occupation. Israel's indefensibly restrictive policy on granting residence status to Palestinians thus helped to worsen the effects of the refugee crisis emanating from the conflict in the Gulf.

School Closures and Curfews

Military authorities permitted three Palestinian universities to reopen in 1991, leaving only Bir Zeit, the flagship of Palestinian universities, still closed. In early December, the Defense Ministry renewed the closure order of Bir Zeit through the end of February 1992. All six campuses had been closed since at least early 1988. In 1990, al-Quds and Bethlehem universities were permitted to reopen, but were closed down again at the start of the Gulf war. In mid-March, they were permitted to reopen. In May, Hebron University was permitted to reopen, followed by al-Najah University and Gaza's Islamic University in the fall.

With the exception of the period of the Gulf war curfew, elementary and secondary schools were closed less frequently than in previous years.

¹⁸¹ *Al-Hamishmar*, September 16, 1991. The Israeli Consulate in New York told Middle East Watch on October 18, 1991 that between 35,000 and 40,000 West Bank and Gazan Palestinians returned home from the Gulf since August 1990.

For the first time during the intifada, military authorities permitted schools to remain open in the summer months to make up for lost days.

Since April 1991, the scope of curfews seems to have declined somewhat compared to previous years, both in geographical scope and duration.¹⁸² However, in December, a harsh two-week curfew was imposed on more than thirty thousand residents of the West Bank towns of Ramallah and el-Bireh, after unknown assailants fatally shot a Jewish settler in the vicinity. Denying that the measure was collective punishment, West Bank Commander Major General Danny Yatom said that the curfew was intended to facilitate the hunt for the perpetrators of the slaying.¹⁸³ Schools and workplaces were shut, and soldiers conducted extensive house-to-house searches, arresting scores of persons.

The Killing of Suspected Collaborators

Murders and violent acts committed by Palestinians against suspected collaborators with Israeli authorities continued to be a major concern in 1991. According to the tally of the Associated Press, 471 Palestinians said to be suspected of collaboration have been killed by other Palestinians since the beginning of the intifada, 147 of them during the first eleven months of 1991.

It is the duty of the Israeli government, as the *de facto* power in the occupied territories, to arrest, charge and prosecute those who commit such violent assaults and homicides. Indeed, many Palestinians have been given long prison sentences for killing or injuring collaborators.

There is, of course, no Palestinian state apparatus with the capacity to perform these law-enforcement and judicial functions. Nor is there a Palestinian government to hold responsible for the killings. However, the Tunis-based PLO and the pro-PLO Unified National Leadership of the Uprising (U.N.L.U.) inside the occupied territories, as the political entities that wield the most influence over Palestinians, have a duty not only to

¹⁸² Partial statistics are provided in B'Tselem, *Human Rights Violations in the Territories 1990/91*.

¹⁸³ Al-Haq press release, December 8, 1991; Clyde Haberman, "Israelis Restrict Movement of Palestinians at Night," *The New York Times*, December 16, 1991; and Jackson Diehl, "Israel Sets New Ban in West Bank," *The Washington Post*, December 16, 1991.

refrain from such acts but also to use their influence to curtail them through public condemnation and repudiation. Middle East Watch deplors the failure of both entities to do so in an unequivocal manner.

The data on collaborator killings is inevitably imprecise. The basis for the charge of collaboration is rarely made public in any detail; some of the killings appear to have had other motives. It is also often difficult to know who is behind individual attacks; some appear to have been carried out by persons acting independently or on behalf of groups outside the PLO umbrella, such as break-away PLO factions and Islamic groups.

Some Palestinians defend the killing of suspected collaborators as necessary to protect the population from informants who aid Israeli security forces by identifying intifada activists and thus put these activists at risk of arrest or physical injury. In addition, Palestinian collaborators, some of whom are issued arms by the Israeli army, have themselves been responsible for killing thirteen other Palestinians from the beginning of the intifada through the end of November 1991, according to B'Tselem. They have also caused injuries and property damage in many instances.

Palestinians claim that most of those who are punished for alleged collaboration had received warnings and an opportunity to respond to the allegations during some form of trial. However, such warnings and "trials" fall far short of guaranteeing accused collaborators due-process rights. There is no independent tribunal or assured right to representation by counsel, and torture is reportedly employed in at least some cases to secure confessions.

These violations of due process are all the more disturbing in light of the severe punishment meted out. They cannot be excused on the grounds that the military occupation prevents the establishment of a formal Palestinian-run judiciary and penal system. Nor can they be justified by the gravity of the accusations against any suspected collaborator. Even if one were to accept the contention that some collaborators are combatants and therefore legitimate military targets, those executed while in the custody of the perpetrators were *hors de combat* and thus entitled to full due process protection according to the principles of humanitarian law set forth in the 1949 Geneva Conventions. The PLO, by seeking to become a party to the Geneva Conventions in 1989, has

pledged to abide by these standards.¹⁸⁴

Since late 1989, the public position of Palestinian leaders on the killing of "collaborators" has improved, but still generally falls short of a clear and absolute prohibition. At the end of 1990, for example, the U.N.L.U. issued orders forbidding activists from killings suspected collaborators unless a decision is taken at the highest level — suggesting that the U.N.L.U. continued to approve of killing collaborators in principle, even if under the circumstances it was trying to bring the problem under control.

In 1991, the persistence of such killings prompted the most extensive public airing of concerns to date by several Palestinian leaders in the territories. The killings, however, have continued.

It does not help that the Palestinian leadership continues to send mixed signals about attacks on those who cooperate with Israel. In leaflets issued in the fall of 1991, the U.N.L.U. affirmed that a death sentence will be executed against anyone "who is proven to have sold, or to have contributed to selling, one inch of [the West Bank, East Jerusalem, or Gaza Strip] to Jews." Although the issue of land sales is in many respects distinct from what Palestinians term "collaboration," the decision to declare it a capital offense at a time when Palestinians are executing several collaborators each month lends legitimacy to acts of violent retribution.

The Right to Monitor

Human rights work in the occupied territories is permitted under certain constraints. Those constraints are far less onerous for Israeli and foreign monitors than they are for Palestinians. This discriminatory treatment applies equally to journalists who report on conditions in the territories, and the following remarks apply to them as well.

Foreign and Israeli human rights monitors and journalists generally need no special permission to enter the occupied territories. They are able to travel about and collect information on human rights abuses, and to disseminate that information with only rare obstruction from the military censor. They have no need to fear arrest or expulsion for their

¹⁸⁴ Paul Lewis, "P.L.O. Seeks to Sign Four U.N. Treaties on War," *The New York Times*, August 9, 1989.

reporting.

However, on innumerable occasions, their access to events or places in the territories is restricted by the military authorities, either by decisions made at a senior level to close off an area by declaring it a "closed military zone," or by local commanders or soldiers who spot journalists or human rights workers at checkpoints or at work in the field and order them out of the area.

The orders for monitors and journalists to leave areas often come at moments when their presence as witnesses is most critical, such as when the IDF moves to quell disturbances or carry out arrests, or when a curfew has been imposed. Military authorities generally claim that the presence of journalists incites Palestinians to resist Israeli authorities.

In 1991, the most flagrant restriction on outside monitors was the decision to bar outsiders from the territories during the Gulf war curfew, except for journalists entering with an IDF escort.¹⁸⁵ At a time when there were reports of severe food shortages, medical emergencies and mass arrests, journalists and nearly all human rights investigators were prevented from witnessing conditions. Palestinian human rights monitors remained in the area, but like the rest of the population, were confined to their homes and unable to work unless they were lawyers and received curfew passes as such.

Fortunately, field staff of the ICRC and the United Nations Relief and Works Agency (UNRWA) were for the most part able to move about in the West Bank and Gaza Strip, as they have been permitted to do before and after the curfew.¹⁸⁶ But the role of these organizations as human rights watchdogs is limited, since they do not ordinarily publicize what they observe.

¹⁸⁵ The IDF told the human rights group B'Tselem that its representatives could enter the territories only with a military escort -- a condition which B'Tselem refused. However, ACRI attorney Tamar Pelleg, who has many clients in Gaza, was permitted to enter Gaza without an escort, and traveled throughout the Strip in the company of Palestinian lawyers who had curfew passes.

¹⁸⁶ While UNRWA's refugee affairs officers (RAOs) generally enjoy freedom of movement, soldiers have on numerous occasions threatened, pushed and beat RAOs, particularly when they have interceded between soldiers and Palestinians. RAOs, who are foreign nationals, are authorized by UNRWA to attempt to negotiate with soldiers in threatening situations.

As in previous years, Palestinian monitors and journalists operated under greater restraints than their Israeli and foreign counterparts. Employees of the two main Palestinian human rights organizations, al-Haq in Ramallah and the Palestine Human Rights Information Center (PHRIC) in Jerusalem, risked arrest and harassment when they identified themselves to soldiers manning checkpoints and conducting routine checks.

Palestinian human rights workers who were arrested in 1991 include PHRIC researcher Mahmoud Jiddah, 43, who was taken into custody on October 8 in Jerusalem when copies of PHRIC's report on the October 1990 killings at the Temple Mount/Haram al-Sharif were found in his bag. He was told that these papers were illegal and constituted incitement, and was detained for one day. The papers were later returned to him, and no charges were filed.

Two other PHRIC workers spent four months in administrative detention during late 1990 and early 1991, and one al-Haq field worker spent two months in administrative detention in 1991. Although they allegedly have been detained for reasons unrelated to their work, the Israeli government's failure to charge or try creates the suspicion that they were detained for their activities on behalf of human rights.

At least thirteen al-Haq and PHRIC workers were barred from entering Israel, including annexed East Jerusalem, during part or all of the period since the end of the Gulf war curfew because they lacked the special permits required for such travel. The restrictions, which were later lifted in some cases, effectively prevented some of the workers from meeting with other staff members or reaching their organizations' headquarters.

Despite these obstacles to their work, Palestinian human rights organizations were able to hold press conferences and to publish reports throughout 1991 that were highly critical of Israeli policies and practices. These organizations were also able to work closely with visiting delegations that come to learn first-hand about human rights conditions. Their findings are freely reported on by the foreign and Israeli press, although the Palestinian press is often censored when it attempts to do so. Many human rights stories in the East Jerusalem-based Palestinian press are censored by the military even when they pose no apparent threat to security, the official justification for the censorship.

Israel has also allowed limited monitoring of prisons by independent groups. Regular access is provided to delegates of the ICRC who, in keeping with that organization's policy worldwide, do not publicize their

findings but instead make them known privately to Israeli authorities.

In 1990, Israeli authorities allowed Middle East Watch to visit and interview prisoners in a variety of prison facilities inside Israel and the occupied territories.¹⁸⁷ A lawyer from the Association for Civil Rights in Israel visits Israel's largest prison, the Ketsiot Military Detention Center, on a weekly basis, and reports regularly on the conditions there. The Israeli chapter of the organization Defense for Children International has visited several facilities in which juveniles are held.

The most severe gap in the access of outsiders to Israeli prisons is the refusal of authorities to allow visits to Palestinian security suspects during the initial phase of investigative detention — the period when mistreatment is most severe. The ICRC is granted access only after fourteen days, while defense lawyers are often prevented from visiting detainees for longer periods.

While lawyers are generally allowed access to their clients in prison following the initial interrogation phase, one Israeli lawyer was barred from entering HaSharon prison in Israel on what Middle East Watch viewed as a flimsy pretext. Yosefa Pick of the Tel Aviv-based Woman's Organization for Political Prisoners, who had been conducting regular visits to Palestinian women security prisoners at HaSharon and issuing sharply critical reports on their conditions of incarceration, was told by the warden in June that she would no longer be allowed to visit inmates after guards had found a pocket knife in her purse. Pick denied that she was attempting to smuggle the knife into the prison, and claimed she had always carried the knife in her purse. The district attorney declined to press charges against her; nevertheless, the warden refused to lift the ban.

U.S. Policy

Before Iraq invaded Kuwait in August 1990, Israel was criticized publicly for human rights abuses by the Bush Administration more often than any other country in the Middle East. Frequent criticism is wholly appropriate since Israel, a country of only five million people, receives more U.S. aid than any country in the world, and more than the sum of what all other countries in the Middle East receive. Of course,

¹⁸⁷ See *Prison Conditions in Israel and the Occupied Territories*, June 1991.

appropriate public criticism should also be leveled, at minimum, at other major aid recipients with poor human rights records, such as Egypt and Morocco.

The criticism that the United States has leveled at Israeli abuses against Palestinians under occupation has been less effective than it could have been for two principal reasons. Foremost is the Administration's unwillingness to link, at least publicly, Israel's human rights record with the amount of aid it receives or the favorable trade relations it enjoys, although, as discussed below, President Bush has twice dragged his feet on housing loan guarantees as a way of pressuring Israel on the peace process and settlements.

Second, the United States has long made clear that its concern for human rights abuses committed by Israel is subservient to the goal of bringing Israel and her neighbors into a peace process. Administration officials have often either chosen to avoid chastising Israel on the grounds that this would be counterproductive to the peace process, or denounced Israeli abuses not as human rights violations but as impediments to the peace process.

In 1991, the subordination of human rights concerns to other regional policy objectives became more pronounced than ever. During the Gulf war in January and February, U.S. relations with Israel seemed to focus entirely on dissuading Israel from retaliating against Iraq for its Scud attacks or from doing anything to Palestinians under occupation that would threaten Arab participation in the U.S.-led coalition against Iraq. American officials made almost no public comments about human rights issues, as discussed below.

Then, with the war concluded, the Bush Administration launched its most vigorous effort yet to coax Israel and its neighbors into face-to-face peace talks. During Secretary of State James Baker's eight trips to the region between March and October, the Bush Administration said virtually nothing publicly about the human rights abuses being perpetrated by any of the governments that it was trying to bring to the negotiating table.

The U.S. Administration is not alone in its implied view that the cause of human rights for Palestinians is best served by focusing on the larger goal of a peace settlement that ends the military occupation and addresses Palestinian political aspirations in some fashion. Many Palestinians and Israelis have articulated this view in various forms.

Middle East Watch is aware of the merits of this argument, as well as of the delicate nature of the diplomacy needed to advance this process.

Nevertheless, given that the peace process is likely to take years, the United States cannot simply stand silent in the face of the grievous abuses that are, unfortunately, likely to continue in the region. The United States, we maintain, can forcefully advocate human rights in the region without jeopardizing its status as a neutral arbiter of peace, so long as its advocacy of rights is perceived as even-handed and consistent toward all countries of the region. Indeed, we believe that a failure to address human rights violations as an integral part of the move toward peace reflects a narrow view of regional security which is likely to produce a weak, hollow and short-lived peace.

Israel has received U.S. financial support since its creation in 1948. Since 1976, it has been the largest aid recipient each year. This aid is justified on the grounds of the close strategic and political alliance between the two countries, and the continuing state of belligerency between Israel and some Arab states. The aid is also intended "to provide the kind of support for Israel that will make Israeli decisions in the peace process easier to take," Deputy Assistant Secretary of State for Near Eastern and South Asian Affairs Daniel Kurtzer told the House Subcommittee on Europe and the Middle East on March 6.

The United States has been "Israel's closest friend in the world" for more than forty years, President Bush declared on September 12, vowing that this relationship would continue. On November 13, he reportedly told Jewish leaders that he remained committed to Israel's qualitative edge in armaments.

The four billion dollar figure cited by President Bush consists of the annual package of \$1.2 million in economic grants, \$1.8 million in military grants that Israel has been receiving each year for several years, and several additional programs. In March 1991, the U.S. government approved a one-time cash grant of \$650 million to compensate Israel for losses sustained during the Gulf war. Israel also benefits from drawdowns in defense equipment and an unusual arrangement by which its aid is delivered in full at the beginning of the year, allowing Israel rather than the United States to earn the interest on the money.

U.S. aid to Israel comes with the stipulation that it is not to be used anywhere across the Green Line, so that in theory, it does not directly subsidize practices of the occupation authorities that violate human rights. U.S. military assistance is for the acquisition of big-ticket items like aircraft and not for the kind of equipment used in suppressing demonstrations. While Israel signs this stipulation each year, the money is, of course, fungible; grants to Israel free up money that can then be

allocated to activities in the occupied territories. This fungibility was the impetus in 1991 for an amendment proposed by the House of Representatives to trim the aid package to Israel by \$82.5 million, the amount that Washington estimates Israel spent on settlements in the territories. That amendment was easily defeated in June.

Each year, the most detailed — though not necessarily the most influential — statement of the U.S. view of human rights conditions in Israel is contained in the State Department's *Country Reports on Human Rights Practices*, released in February. The chapter on the occupied territories in 1990 covered virtually every major category of human rights violations in a technically accurate fashion. However, the report failed to convey the systematic nature of the abuses, because it failed either to characterize their extent or to place them in the appropriate context.

In 1990, it was revealed that the State Department's Human Rights Bureau in Washington had softened the critical tone of the draft chapter covering 1989 which had been prepared by the highly regarded team of officers at the Jerusalem consulate and Tel Aviv embassy who are responsible for human rights monitoring.¹⁸⁸ This editing by the bureau in Washington was heavier than is commonly the case for other chapters.

The tone of the 1990 chapter is disturbingly similar, although it is not known whether this is due to rewriting in Washington. Facts are presented accurately but disembodied from their larger contexts, and findings about certain controversial but important matters, such as the prevalence of torture, are attributed to others without a clear position being taken by the State Department. A few examples are provided here.¹⁸⁹

- o On torture, the report states on pages 1479-80 that "critics" allege that various forms of mistreatment are inflicted on suspects under interrogation, and that such abuses "reportedly have continued since they were confirmed in the 1987 report of the officially appointed

¹⁸⁸ See Human Rights Watch, *World Report 1990*, p. 477fn.

¹⁸⁹ Further analysis of the *Country Reports* chapter can be found in critiques prepared by al-Haq and the Lawyers Committee for Human Rights.

Landau Commission."¹⁹⁰ By contrast, in response to a congressional question posed in February 1991 about the Landau Commission's endorsement of "moderate physical pressure" by the Shin Bet, Assistant Secretary of State for Human Rights and Humanitarian Affairs Richard Schifter stated, "We have made it clear that we consider all forms of 'physical pressure' on persons under detention unjustifiable." It is disappointing that this categorical position is not reflected in the bland treatment of torture in the *Country Reports*.

- o The report states on page 1487 that when soldiers were disciplined in cases involving the deaths of Palestinians, "some punishments appeared lenient." In fact, leniency is endemic: only a handful of soldiers have been sentenced to at least one year or more in prison for a wrongful death during the intifada, and no soldier has received more than a two-year prison term.
- o On page 1491, the report cites Israeli claims that in 1990, 326 family-reunification applications were approved for Palestinians to reside in the West Bank and Gaza and 269 were rejected. This figure misleadingly suggests that most "non-resident" Palestinians who apply are given permanent-resident status by the Israeli authorities. To be fair, the State Department report should also have included data on how many applications were submitted and are still pending, and how many Palestinians have given up applying altogether because of

¹⁹⁰ This tentative language contrasts with the report's characterization of abuse in Morocco:

The number of credible reports of torture and degrading treatment remains relatively high....Torture and other forms of cruel treatment occur most often during incommunicado detention following initial arrest in order to extract confessions which are then used to convict the suspect. Methods of torture include beatings, sleep deprivation, keeping prisoners blindfolded and handcuffed for weeks on end. (p.1548)

the cost and duration of the application process.¹⁹¹

Defending their tempered response to Israeli human rights practices, U.S. officials often claim that most of their communication with Israel is through private channels. Secretary Schifter asserted in 1990 that the United States communicated with Israel on human rights matters more than with any other country.¹⁹²

In our view, private human rights diplomacy is insufficient to address Israel's human rights abuses. Private diplomacy theoretically could be effective coupled with representations that aid or other benefits will be cut if human rights abuses are not curtailed, but the Bush Administration's public posture makes it unlikely that such representations are being made. Absent such linkage, the only effective U.S. human rights policy toward Israel must be based on the stigmatization that consistent public criticisms of abuses can help to produce.

In 1991, U.S. officials adopted a quieter approach to Israeli human rights abuses than in previous years. Criticisms were less frequent and usually uttered by lower-level officials, despite Secretary Baker's eight visits to Israel between March and October, after not having visited the country once during his first two years in office.

The marked difference from late 1990 to 1991 revealed the degree to which U.S. human rights policy toward Israel is held hostage to other objectives. From October 1990 until mid-January 1991, the United States took an unusually active role in criticizing Israel at the United Nations, backing two Security Council resolutions on the Temple Mount/Haram

¹⁹¹ While the available statistics are sometimes incomplete or inconsistent, the State Department could have given longer-term figures to suggest the magnitude of the problem. For example, on January 30, 1990, then-Defense Minister Yitzhak Rabin told the Knesset that Israel had granted 13,509 of 88,429 requests for reunification since 1967. (Sami Aboudi, "Israel Temporarily Halts West Bank Deportations," *The Washington Post*, February 1, 1990.) The International Committee of the Red Cross was reported in *The Washington Post* of January 30, 1990 ("Non-resident" Palestinians Forced Out) as saying that nine thousand of 140,000 requests had been granted between 1967 and 1987. Although current cumulative figures are not available, decisions since 1990 have not altered the basic practice of rejecting the vast majority of applications.

¹⁹² See Human Rights Watch, *World Report 1990*, p. 476.

al-Sharif killings and one on deportations. On January 4, following a particularly violent week in the territories, the United States did not block a Security Council statement "deploring" Israel's use of force against Palestinian civilians.

Those who dismissed the new U.S. zeal on human rights as a stratagem to preserve the anti-Iraq coalition could feel vindicated once the war began on January 17. As soon as Iraqi Scud missiles began landing in Israel, the principal U.S. policy objective became to persuade Israel not to enter the war. Human rights criticism virtually stopped.

Most noteworthy was the U.S. silence on the matter of the blanket curfew in effect for over a month in the West Bank and Gaza Strip. We are not aware of a single public statement by U.S. officials concerning this devastating restriction on the lives of 1.7 million people. No public comment on the curfews came during Deputy Secretary of State Lawrence Eagleburger's two trips to Israel in January, during Defense Minister Moshe Arens's meetings in Washington in February with President Bush, Secretary of State Baker and Secretary of Defense Dick Cheney, or at any other time. It seemed as if the U.S. was relieved that relative calm had been achieved in the territories by confining all Palestinians to their homes, minimizing the risks of a Temple Mount-like conflagration that would jeopardize continued Arab participation in the U.S.-led alliance.

It is not known whether U.S. officials privately voiced concerns to their Israeli counterparts about the effects of the curfew on the Palestinian populace. What is clear, however, is that the mild reaction to the curfew continued even after the war had ended, as was made apparent by Secretary Schifter's written reply to questions for the record about the curfew posed by the House Subcommittee on Human Rights and International Organizations on February 26:

Q. Are curfews still being imposed on the territories due to the war? What effect have these curfews had on the Palestinian community in the territories? Do you think the measure is warranted?

A. The wartime curfews have been ended. They severely restricted economic life in the Occupied Territories. The Israeli government evidently considered them a necessary measure. Curfews continue to be widely imposed following security incidents. These, too, can cause economic and social hardships.

When specifically requested for the U.S. view on the wartime curfew, Schifter merely stated that the Israelis considered it necessary. Nor did the Administration use the occasion of granting Israel \$650 million in March, as compensation for losses during the Gulf war, to call attention to the proportionately greater economic losses to Palestinians, due, in part, to the stringent wartime curfew imposed by Israel.

While failing to respond to the single most pressing human rights issue during this period — the curfew and its effects — the United States did voice dissatisfaction at the detention without charge of certain prominent Palestinians, a practice which it has often criticized in the past. The administrative detention of Sari Nusseibeh in January prompted a statement from State Department spokeswoman Margaret Tutwiler that "The charges against Dr. Nusseibeh, like those against other administrative detainees, ought to be made public and a chance should be given to him to defend himself in a court of law." A nearly identical statement was issued when Gaza journalist Taher Shriteh was detained one month later.

In March, the United States deplored Israel's decision to deport four Palestinians, as it has criticized deportations consistently in the past. Both U.S. Ambassador Brown and the State Department spokeswoman deplored the measure, and the United States supported a critical presidential statement from the U.N. Security Council. The Department spokeswoman again criticized the deportations when they were finally carried out in May, and said that Secretary Baker had raised the matter when he was in the region.

If Secretary Baker had indeed raised the matter, he did so only privately. From March onward, his efforts were devoted almost exclusively to the sensitive task of persuading Israel, the Palestinians and Syria to attend peace talks. Both he and other senior U.S. officials shunned public criticism of human rights abuses by Israel.

Typical of the State Department approach during this period was its reaction to reports of a March 31 Israeli cabinet decision to increase deportations, house demolitions and restrictions on the entry of Palestinians into Israel, in response to a spate of knife attacks on Jews by Palestinians inside Israel. Administration comment came in the form of a statement issued by the State Department on April 12 which blandly stated that the United States had raised its "concerns" with the government of Israel, and that "Israel should be looking for ways of promoting and developing dialogue and trust with the Palestinians, not imposing new restrictions."

In July 1991, the Administration avoided commenting on the release of the report by the Israeli investigating judge that some of the shooting deaths at the Temple Mount/Haram al-Sharif in October 1990 had been unjustified. "The president and the Department of State reacted to the Temple Mount tragedy right after it happened on October 8 [1990]," the spokesperson said on July 19. While the original statements condemning the use of excessive force were both strong and public, there was a new development that was worthy of comment: an Israeli investigation had determined that unjustified deaths had occurred, and yet not a single police officer or commander had been charged or disciplined in connection with the incident.

While avoiding direct criticism of human rights abuses, Secretary Baker reportedly asked Israel to consider confidence-building gestures during this period such as halting deportations, releasing prisoners, and reopening closed universities. On the eve of Baker's visit to the region in April, Israel announced a new tax-incentive plan for investment in Gaza and the release of some one thousand Palestinian prisoners, a higher number than it usually releases at that time of year, on the occasion of the Muslim holy month of Ramadan. An Israeli Defense Department spokesman denied that these measures were a response to the U.S. call for goodwill gestures.¹⁹³

The issue that senior U.S. officials raised most insistently in public was Israel's accelerated construction and expansion of settlements on the West Bank. In our report on U.S. policy toward Israel in 1990, we praised the Bush Administration for using the occasion of Israel's request for \$400 million in housing loan guarantees to express disapproval of Israel's settlement policies in the occupied West Bank and Gaza Strip. The delay in releasing those guarantees until 1991 while the Administration demanded stronger assurances that the money would not be used for construction in the occupied territories provided a mild but, under the circumstances, potent reminder of how the United States should be using its considerable aid to Israel to focus attention on human rights concerns.

In 1991, a request by Israel for \$10 billion in housing loan guarantees again provided the only occasion on which the Bush Administration behaved as if aid to Israel should be conditioned on its

¹⁹³ Jackson Diehl, "1,000 Arab Prisoners Are Freed by Israel as Baker Visit Begins," *The Washington Post*, April 9, 1991.

policies toward Palestinians. Unhappy with the Shamir government's conditions for participating in peace talks and its continuing policy of building and expanding Jewish settlements in the occupied territories, President Bush prevailed on Congress in September to delay for 120 days consideration of the loan guarantees.

As critical as the Bush Administration has been of settlements, it has never publicly characterized them as illegal under the Fourth Geneva Convention — a view expressed by the Carter Administration but not since. Nor have senior officials publicly condemned the arbitrary means by which land for settlements has been confiscated from Arabs, or the discrimination that favors Jewish settlements over Palestinian communities in terms of building and land use permits, government funds and services, and the pricing of water. By condemning settlements only as obstacles to peace, the United States has given Israel a pretext to continue settlements as a bargaining chip in the peace process, rather than as an illegal act that should be halted unconditionally.

The tension over settlements began building shortly after the Gulf war. In his first visit to Israel in March, Secretary Baker is said to have voiced concern with Prime Minister Shamir about reports that Israel was planning ten thousand housing units for new immigrants in the occupied territories.¹⁹⁴ The following week, the State Department delivered to Congress a report charging that Israel was building and expanding settlements more rapidly than most people were aware, and that four percent of the Soviet Jews who had emigrated to Israel in 1990 had settled in the occupied territories including East Jerusalem.

Reacting to reports of a new settlement, White House spokesman Marlin Fitzwater again called settlements "an obstacle to peace" on April 16. The U.S. ambassador in Tel Aviv, William Brown, denounced the settlements in a speech on May 3 before an audience of Israeli businessmen.

The sharpest criticism of settlements came from Secretary Baker, when he told the House Foreign Affairs Committee on May 22:

Nothing has made my job of trying to find Arab and Palestinian partners more difficult than being greeted by a new settlement every time I arrive. I don't think that there is any bigger obstacle to peace

¹⁹⁴ David Hoffman and Jackson Diehl, "Baker Asks Israel for Peace Moves," *Washington Post*, March 13, 1991.

than the settlement activity that continues not only unabated but at an enhanced pace.

President Bush followed with hints that if Israel persisted in building settlements, he might oppose the ten-billion dollar loan guarantee which Israel was planning to seek from the United States to help resettle Soviet immigrants.¹⁹⁵ In a July 1 press conference, he declined to state this condition publicly, but forcefully condemned the settlement policy:

I don't think [approval of the loan guarantees] ought to be a *quid pro quo* [for an Israeli pledge not to build new settlements]. What I do think, and I've said this over and over again, that it is against U.S. policy for these settlements to be built. So, I'll leave it right there and avoid the linkage that you understandably ask about....[But] we have not changed our position...on settlements, and we're not going to change our position on settlements. So please, those in Israel, do what you can to see that the policy of settlement after settlement is not continued. It is counterproductive [to the peace process].

Tension over the settlement issue came to a head in September, the month that Israel intended formally to request the loan guarantees. Eager to avoid complications to the now-likely peace conference, Secretary Baker urged Prime Minister Shamir to postpone the request. When Shamir refused, President Bush asked Congress to put off consideration of the request for four months, explaining: "It is in the best interest of the peace process....We don't need an acrimonious debate just as we're about to get this peace conference convened."

The debate became acrimonious anyway, and the Administration's position hardened in response to Israel's refusal to retreat. President Bush said in a September 13 press conference that "during the current fiscal year alone, and despite our own economic problems, the United States provided Israel with more than \$4 billion in economic and military aid, nearly \$1,000 for every Israeli man, woman, and child, as well as with \$400 million in loan guarantees to facilitate immigrant absorption."

¹⁹⁵ Jon D. Hull, "The Good Life in Gaza," *Time*, July 1, 1991; and Thomas L. Friedman, "Bush Presses Syria and Israel on Peace," *The New York Times*, July 2, 1991.

Then, on September 17, Secretary Baker made explicit to reporters what had been implicit for months: the Bush Administration intended to link the loan guarantees to tough new restrictions on the construction of settlements in the occupied territories. For the first time, the Administration seemed to be threatening to condition aid on Israel halting its settlement policy.¹⁹⁶

By the end of September, President Bush had mustered support for delaying consideration of the loan request until after the peace talks had begun, and on October 2, the Senate formally agreed to the postponement. The month-long confrontation over the issue was a humiliating defeat for Israel, which had apparently overestimated American support on this issue.

The toughening U.S. stand on settlements is consistent with a muted approach to other human rights abuses committed by Israel: both are guided by a desire to avoid complicating the peace process. To its credit, the Administration devoted more effort in 1991 to advancing that process than any administration had since the Camp David accords were signed in 1978. The coming year may well reveal much about whether the single-minded promotion of peace talks can also be an effective human rights policy.

The Work of Middle East Watch

During 1991, Middle East Watch issued a number of reports on Israel. Two principles helped to determine our choice of subjects: a determination to continue monitoring issues that we have covered in the past and, in consultation with local human rights groups a desire to issue reports that fill critical gaps in the vast literature on human rights in the occupied territories.

In addition, sometimes our motive was simply to highlight a dire situation that may not have been widely known. In January and February, when the world's attention was riveted to the conflict in the Gulf, Palestinians were chafing under the strictest curfew of the twenty-four-year occupation. When hostilities broke out, Middle East Watch sent a

¹⁹⁶ In delaying the \$400 million in loan guarantees in 1990 the U.S. attached explicit conditions only to how that particular sum was to be used, not to Israel's settlement policy in general.

telegram to Israeli authorities deploring their failure to provide gas masks to Palestinians to the same extent that they had equipped Israeli citizens. We also issued a press release urging all parties to the conflict to abide by the relevant laws of war and reminding Israel of its continuing obligations toward the population under its control.

A January 27 newsletter described and criticized the severity of the curfew which had then been in effect for eleven days. A newsletter issued in February provided a case study of a reporter who had been detained without charge during the curfew. The evidence strongly suggested that Reuters stringer Taher Shriteh had been punished for journalistic activities. The following month, Middle East Watch protested to Israeli authorities the detention without charge of physician Mamduh al-Aqer.

In April, Middle East Watch released a report on conditions in prisons, police jails and army-run detention centers, in both Israel and the occupied territories. The report, based on visits to twelve facilities, reserved its sharpest criticism for the army-run detention centers, in which the majority of Palestinian inmates are held, and the Russian Compound police jail in Jerusalem. The Israeli Foreign Ministry issued an eight-page rebuttal, which was reproduced in the printed version of the report.

In July, Middle East Watch protested to prison authorities the decision to ban Israeli lawyer Yosefa Pick, who is associated with the Tel Aviv-based Women's Organization for Political Prisoners, from visiting Palestinian women prisoners. In our view, the accusation by prison authorities that Pick had attempted to smuggle a knife into HaSharon prison was a pretext to prevent her from consulting with the inmates and publicizing their complaints. The ban on her visits continued even after the state prosecutor declined to file criminal charges, and the Association for Civil Rights in Israel has filed suit in the High Court of Justice seeking to restore her access to prisoners.

In September, Middle East Watch issued a newsletter analyzing the clashes that had occurred on October 8, 1990 at the Temple Mount/Haram al-Sharif in Jerusalem, in light of an Israeli judge's inquest into the events. The newsletter continued Middle East Watch's scrutiny, begun with its 1990 report entitled *The Israeli Army and the Intifada*, of the failure of Israeli authorities vigorously to investigate and punish members of its security forces for acts of excessive force. In the newsletter, we praised the thoroughness of the inquest but condemned the failure of Israeli authorities to prosecute or punish a single policeman or commander whose conduct had contributed to the avoidable deaths that

had occurred that day. Letters urging appropriate disciplinary action were sent to Israel's police and justice ministers.

As part of its work on human rights in Kuwait, Middle East Watch issued a newsletter on October 23 documenting the plight of stateless Palestinians in that country. The report described Israel's restrictive residence policies toward Gazan Palestinians who for one reason or another lack residence permits, and called on Israeli authorities to ease those policies so that a greater number of these Palestinians who fled or were forced out of Kuwait could return to the Gaza Strip.

On October 28, Middle East Watch released a report in Madrid on the human rights record of the principal regional parties at the Madrid Peace Conference. The report contained an overview of Israeli abuses in the occupied West Bank and Gaza Strip, as well as a section on the killing by Palestinians of suspected collaborators. In the report and in its lobbying efforts with the various delegations at the talks, Middle East Watch urged that respect for human rights be made an explicit part of the agenda for the multilateral talks, as they were in the 1975 Helsinki accords in Europe and the Central American peace plan of 1987.

KUWAIT¹⁹⁷

Human Rights Developments Since Liberation

Far from recognizing the importance of upholding human rights standards after witnessing the atrocities committed by Iraqi occupying forces, the reinstated Kuwaiti government disregarded those standards as soon as it returned from exile on February 26, 1991. The pretext for these abuses was a government-inspired quest to root out those who had collaborated with the Iraqi occupiers and to restructure Kuwaiti society to make it more reliable politically. Throughout the year, statements continued to be issued by senior Kuwaiti government officials, including the emir and the crown prince, that amounted to invitations to abuse.¹⁹⁸ The victims, almost uniformly long-term residents of Kuwait, are principally Palestinians, Iraqis and the stateless Arabs known as Bedoons.

The nature of Kuwaiti abuse has changed over time. During March and April, summary executions, as well as deaths in detention caused by beatings and neglect, were the most pressing problem. Scores were killed at the hands of Kuwaiti forces, according to testimony collected by Middle East Watch. Other evidence of the scope of the killings included fifty-four unidentified bodies of victims of post-liberation killings discovered in a mass grave on the outskirts of Kuwait City.

Between May and August, as the trials of suspected collaborators inflamed anti-Palestinian and anti-Bedoon hostility, large-scale arrests and forced deportations became the predominant abuse. Although martial law was lifted on June 26, torture continued until September, when the

¹⁹⁷ For discussion of abuses committed during the Iraqi occupation of Kuwait in January and February, 1990, see the chapter on Iraq and Iraqi-occupied Kuwait.

¹⁹⁸ During a violent campaign against suspected collaborators, an April 8 speech by the emir — his first since returning from exile — called for cleansing Kuwait of a "fifth column of Saddam's cohorts." This theme was repeated by the crown prince in his speech before the National Council on July 9 and in an interview on December 12. It was also echoed by Shaikh Ali al-Sabah, minister of defense, on July 5 and November 21.

administration of prisons changed and prison conditions improved. Even then, arbitrary arrests continued, albeit on a smaller scale. Expulsions of Palestinians, Bedoons and Iraqis also continued, and pressure on these communities to leave Kuwait was unabated.

Although the Kuwaiti government has attempted to place the blame for abuse on forces beyond its control, most were in fact committed by official security forces or by irregular armed groups working closely with official forces. These included many returning exiles intent on revenge who were openly welcomed by an army eager to augment its reduced ranks. Frustrated by the lack of opportunity to fight the Iraqi occupiers, these armed forces redefined the "enemy" to include the above-listed disfavored nationalities. The most notorious source of abuse has been the State Security Investigative Police (*Mabaheth Amn al-Dawla* or SSIP), which reportedly actively recruited hundreds of youths, often of unscrupulous bent, who were granted wide discretion to arrest, beat and hold prisoners incommunicado for long periods.

The highest levels of the Kuwaiti government share responsibility for these abuses in that they have yet to arrest or prosecute any of those responsible, in notable contrast to the vigor with which the government has pursued perceived collaborators with the Iraqi occupiers. To the contrary, the periodic government calls to cleanse Kuwait of a presumed fifth column have, if anything, further inspired this violence.

The government's hand in flouting international standards was most readily apparent in the charade that passed for trials in the martial-law tribunals charged with judging suspected collaborators. The proceedings, several of which were attended by Middle East Watch observers, were fundamentally marred by a series of due-process shortcomings, in violation of international fair-trial standards to which Kuwait has subscribed, including Article 75 of the First Additional Protocol to the Geneva Conventions. In addition to the routine introduction of confessions coerced through torture, defendants were systematically interrogated by the police, the prosecutor and often the court without the benefit of having consulted with counsel; conduct not clearly proscribed by pre-existing criminal law was often penalized; evidence of guilt other than coerced confessions was often slight or nonexistent; no appeal was permitted, and the informal clemency review process, while commuting all death sentences to life imprisonment, reaffirmed every conviction entered by the martial-law courts without even hearing from defense lawyers; and the trial court, on the rare occasion that it showed any willingness to consider the frequently raised defense that the Iraqi

occupiers had forced defendants to perform certain tasks, paid little or no apparent heed to the differing duties of loyalty to the Kuwaiti government-in-exile that could fairly be expected from Kuwaiti and non-Kuwaiti citizens. The result was that 118 of the 164 defendants tried were sentenced to harsh prison terms, with no further judicial recourse. They remain in prison, despite the Kuwaiti government's efforts in other areas to mollify some of the worst abuses of the immediate post-liberation period.

Deportation of long-term residents began shortly after liberation, accelerated during the summer months and continued throughout the year. Although the Fourth Geneva Convention of 1949, to which Kuwait is a party, provides for the protection of Iraqis, Palestinians, Bedoons and others in Kuwait, its terms were systematically flouted in the process of summarily deporting these groups. Stateless Bedoons and Palestinians have been expelled without any provision being made for their acceptance by another country. Refugees who fled persecution in Iraq have been returned to Saddam Hussein's grasp. Expulsions have proceeded without any opportunity to challenge deportation before an independent tribunal.

Promises by the Kuwaiti government-in-exile to reconvene the National Assembly, suspended in July 1986, and restore basic freedoms were broken as soon as the ruling Sabah family was reinstated. Martial law was declared on February 26 and extended until June 26. Pre-existing censorship regulations for the press were resumed, leading to the closure of the first post-liberation newspaper, *February 26*. After months of equivocation, the government called for the election of the National Assembly in October 1992. Meanwhile, it revived the near-defunct National Council, a rubber-stamp advisory body which is considered an affront by Kuwait's growing constitutional movement. National Council members are being groomed to run as government candidates in the 1992 parliamentary elections against an opposition deprived of the right of free assembly or expression.

Despite this dismal beginning, human rights conditions gradually improved as the year progressed as international outrage over the government's conduct mounted. Summary executions largely stopped after the first two months, and prison conditions improved dramatically over the summer. In August and September, procedures for the detention and trial of state security suspects were also revised and improved. The International Committee of the Red Cross (ICRC) was granted access to all detention centers — though not all detainees — and was allowed to

interview all those being deported.

Scores of non-Kuwaiti residents were killed in 1991 by Kuwaiti security forces or groups working closely with them. Some of those killed were summarily executed with a bullet to the head while others died in official Kuwaiti custody as a result of torture, denial of medical care or lack of water. Most killings occurred in March and April, but some took place thereafter. Kuwaiti officials have so far failed to provide a full accounting of these killings or bring any of the perpetrators to justice.

One Kuwaiti cemetery, al-Rigga, holds fifty-four "unidentified" bodies of people who have been killed or died in unexplained circumstances since the week after liberation, according to cemetery records. Most of the killings were recorded as having occurred in March, but six were listed as having taken place in April and one in May. Middle East Watch research points clearly to government complicity in these deaths. A report issued by Middle East Watch in September, *A Victory Turned Sour*, identified over forty extrajudicial killings, the majority of Palestinians. Many others who have disappeared may also be dead, but Kuwait has prevented evaluation of these cases by keeping several hundred prisoners in incommunicado detention and by deporting others without notifying their families.

The Kuwaiti government has set up no effective mechanism to trace those who have disappeared since liberation. The Kuwaiti Association to Defend War Victims and a Palestinian group have registered the names of the disappeared. One Palestinian reported to Middle East Watch that he had been subjected to a threatening interrogation by security forces who accused him of compiling a list of detained and disappeared Palestinians.

Because of these difficulties it has not been possible to determine the precise number of those unaccounted for since liberation, but Middle East Watch believes it to be in the hundreds, including some who may have been deported without notice to their family. Middle East Watch was given one list of over one hundred Palestinians who have been missing since their arrest. Other sources have given Middle East Watch scores of additional names.

Cases documented by Middle East Watch of those who disappeared at the hands of Kuwaiti security forces include Bedoons, Palestinians and Iraqis. Among them are individuals who have disappeared since the first days after liberation. For example, Aifan Ali Dhaher al-Enezy, 45, a Bedoon civilian employee of the Ministry of Defense, and his son Abdalla, 23, have disappeared since they were taken from their home on February

27 by a group of armed men and have not been heard from since. Hafez Abdel Haleem, a 55-year-old Palestinian employee of the government power company, has disappeared since March 4.

Torture and ill-treatment were systematic in Kuwaiti places of detention in the first six months after liberation. In the period immediately following liberation, the Kuwaiti military and "resistance" started a simultaneous campaign of arresting people suspected of having cooperated with the Iraqi occupiers or harbored sympathy for Iraq. The "resistance" as used here refers to a heterogeneous grouping that includes some of those who actually fought the Iraqi occupiers as well as ordinary civilians and elements of the regular Kuwaiti army and police who joined following liberation. Young Kuwaitis who returned from exile and joined the resistance or the army were widely considered to be especially prone to perpetuating abuses. Although there were some differences between the military and the resistance, the two groups often seemed to work cooperatively. Some rank-and-file members worked in both camps.

In the large number of detention centers said by Kuwaiti officials to be outside the control of the military and to be run solely by members of the resistance, summary justice was the order of the day during the first month after liberation. Execution, torture and beatings were meted out against those suspected of having betrayed Kuwait. Survivors were either released or handed over to the military.

In prisons under complete military control, such as the Military Prison, most detainees were held in extremely crowded cells and suffered severe shortages of water, medical care and food, leading to numerous deaths. A relief official who visited the Military Prison in late March and early April told Middle East Watch that detainees were "dying rapidly."

Conditions at the Juvenile Detention Facility, used mainly from early April through mid-August, were better: torture was not as systematic, and the ICRC and families had access to most detainees.¹⁹⁹ One former detainee told Middle East Watch of mistreatment by the guards, including what he described as "night-time beating parties." Another prisoner reported that while this prison was a considerable improvement over the G-1 (National Guard) facility, where he previously had been held,

¹⁹⁹ Later, the Juvenile Detention Facility was used occasionally as a temporary holding facility for "infiltrators" — people captured while trying to enter Kuwait illegally. Despite its name, this prison was used for detainees of all ages.

prisoners were still beaten and medical care was inadequate. In incidents reported to Middle East Watch, beatings of prisoners continued even in the presence of outside observers.

The State Security Investigative Police (SSIP) held hundreds of prisoners incommunicado throughout 1991. SSIP has a number of holding cells, some of which are exposed to the harsh Kuwaiti sun, with day-time temperatures that frequently exceed 100 degrees Fahrenheit. When the SSIP was reconstituted shortly after liberation, unemployed youths were recruited, including elements described by human rights observers as unscrupulous, thus increasing the danger of further mistreatment of prisoners. By year's end, SSIP had become the main force implicated in human rights abuses in Kuwait.

While the Kuwaiti government declared that its policy was to protect the rights of detainees, it did not act firmly to enforce this policy. For example, the government's use of incommunicado detention facilitated acts of torture and mistreatment. From February 26 until March 23, almost all detainees were held incommunicado. On March 23, the ICRC gained access for the first time to a detention facility, the Military Prison. Family visits followed, but most detainees did not see their lawyers until after the martial-law trials started on May 19, when lawyers were allowed to see clients who had been formally charged. The ICRC did not secure access to the Deportations Prison until June 9, and access to the G-1 and State Security Investigative Police detention facilities did not come until August. By December, the government had granted the ICRC access to all known places of detention, but ten months after liberation, the ICRC was still not permitted to see all detainees. Inmates report that some prisoners are hidden during ICRC visits. In addition, under the Kuwaiti practice of briefly holding suspects before deporting them without judicial hearing, some detainees are never visited by the ICRC before they are moved to the Deportation Prison. Released state-security detainees who are persuaded through threats to leave the country "voluntarily" are not usually seen by the ICRC.

In another example of failure to implement stated policy, the Kuwaiti government told Middle East Watch in late March that assistant prosecutors — representing the Ministry of Justice — would be assigned to police stations. However, this process took months to complete, leaving detainees unprotected by any civilian presence. Even when Justice Ministry representatives were on hand, police officers in charge did not always defer to their authority. In the first several months after liberation, nearly all detainees were tortured.

Among detention places where Middle East Watch documented torture as having taken place were the Military Prison, the G-1 facility, and the headquarters of the State Security Investigative Police. Torture also took place at Mubarak al-Kabir Hospital, the Teachers Association Building in the al-Jahra district, private homes, and the Sabah al-Salem, Khaitan, al-Jaberiyya, al-Nugra and al-Jahra South police stations.

The martial-law trials of alleged collaborators exposed the systematic use of torture to extract confessions. Confessions were frequently the only evidence against defendants, and Kuwaiti prosecutors seemed to believe that a confession, regardless of how it was obtained, was "the master of all evidence."²⁰⁰ One military officer defended the treatment of prisoners by saying that "they all confessed their crimes." Another was more blunt: "We have to use force to make them confess. They would not confess without the use of force." When asked about evidence against alleged collaborators, Abdel Aziz al-Dakhil, deputy minister of justice, said, "Of course it depends on confessions. That is the main method."²⁰¹

For example, Usama Suhail Hussein was sentenced to death (later commuted to life imprisonment) on June 15, for his alleged work in the production of the occupation newspaper, *al-Nida'*. According to family members, he was tortured with live electric wires on sensitive parts of his body. He was made to sit on a lit kerosene heater which so scalded parts of his body that during his trial he could not sit on a chair. His family also reported that he had cigarette burns on his body and that medical care had not been adequate.

Other defendants tried before martial-law courts had broken shoulders, wrists burned by handcuffs through which electric current had been passed, broken fingers, welts from severe beatings, cigarette burns and variety of other marks left by torture inflicted to extract confessions.

Persistent reports of torture in Kuwait by the press and human rights organizations — both local and international — finally moved the Kuwaiti government to order a stop to this systematic official practice. Although there have been occasional governmental reports of investigation into

²⁰⁰ From the prosecutor's presentation in the case of Omar Essayed Muhammed Omar, on June 13.

²⁰¹ Shyam Bhatia, "Kuwaitis pave the way for public hangings," *The Observer* (London), April 22, 1991.

abuses, no one is known to have been brought to justice. Systematic torture appears to have stopped since September, but Middle East Watch has continued to receive reports from family members and foreign reporters visiting Kuwait about individual incidents of torture of detainees held by the State Security Investigative Police.

From March through July, there were persistent reports of rape of Asian women by Kuwaiti forces and other armed men in Kuwait. The women were usually stopped or taken from their homes under the pretext of checking their immigration papers and then raped. Middle East Watch has no evidence to indicate that these rapes were committed as part of a deliberate government policy. However, the Kuwaiti government is nonetheless responsible for these crimes insofar as it did not fulfil its duty to protect residents of Kuwait by vigorously investigating and prosecuting the rapists. This failure is particularly glaring when, as was often the case in these crimes, rape was committed by those in uniform.

A U.S. adviser to the Kuwaiti government was quoted as making the astonishing admission that the reason for the prevalence of rape was a combination of a shortage of police officers to conduct investigations plus the fact that "the police don't care because [the victims] are only Filipinos or Sri Lankans."²⁰² This official indifference transforms what would ordinarily be a common crime into a governmental act of omission in violation of the victims' human rights.

Since liberation, thousands of people have been detained without due process of law. Detainees have been mostly Palestinians, Iraqis and Bedoons, but also include Sudanese, Egyptians, Tunisians and Kuwaiti citizens. Because the government has not given a full accounting, it is difficult to ascertain exactly how many have been detained. Middle East Watch estimates that more than six thousand were detained between February 27 and the end of November.

Although the number of those arrested each day has declined considerably, arrests continue as the Kuwaiti government persists in its articulated belief that there are large numbers of Iraqi agents in Kuwait. In his address to the first session of the National Council on July 9,

²⁰² *The Observer* (London), April 14, 1991. In one case mentioned in the article, policemen in a police station refused to register the complaint of a woman raped by two uniformed men who had come into her home to "examine her papers."

Crown Prince and Prime Minister Shaikh Sa'ad al-Abdalla said that the government is continuing its quest to "purify the country of the evil elements that constitute a danger to its security."²⁰³ On November 21, Shaikh Ali al-Sabah, minister of defense, told the government daily *Sawt al-Kuwait* that there were still "fifth columnists" in Kuwait. As late as December 12, the crown prince reiterated this position in an interview with the Saudi weekly *al-Majalla (The Magazine)*.²⁰⁴

Most of those apprehended were detained without a warrant or any other mechanism to protect them against arbitrary arrest, and some were then deported. Although the government announced at the end of March that all house searches had to be authorized in advance in writing, no such procedure was required for arrests.

Most of these arrests were plainly arbitrary. For example, Middle East Watch representatives witnessed the arrest of several people simply because they were of a nationality deemed sympathetic to Saddam Hussein or because they had answered questions in a manner seen as impertinent by soldiers who themselves were rude and aggressive. Middle East Watch also documented the arbitrary arrest of doctors and other health professionals because of their nationality. Those seen talking to foreign reporters were also arrested.

Detainees formally charged with collaboration often appeared to be held on the basis of dubious evidence. As described below, many of those found guilty of collaboration by the martial-law tribunals were convicted on the basis of confessions obtained by torture. For example, on June 20, the Fourth Martial Law Court sentenced Malek Muhammed Ahmed Mas'ood, a fifteen-year-old Kuwaiti-born Palestinian, to twelve years' imprisonment followed by deportation. He was accused of having joined a Palestinian militia, received weapons' training, and possessed a firearm for the purpose of aiding the Iraqi occupation. Two of his brothers, Ma'moon and Ayman, both in their early twenties, were sentenced to

²⁰³ From the text of the speech as distributed by the Kuwaiti News Agency and published in *Sawt al-Kuwait*, July 10, 1991.

²⁰⁴ Shaikh Ahmed Humoud al-Jaber al-Sabah, minister of interior, told *The New York Times* (July 7, 1991) that "the biggest internal security threat" is the presence of "Iraqi agents" suspected of hiding in Kuwait. He said that he is making a special effort to round up Iraqi "agents," and that one or two were being arrested almost every day.

death (later commuted to life imprisonment) in the same case, one of them *in absentia*. According to his family, Malek was tortured to extract a confession used to convict his brothers.²⁰⁵

During the martial-law trials that lasted from May 19 to the end of martial law on June 26, seventy-four cases were resolved involving 164 defendants, 122 of whom were present. One hundred eighteen were convicted and forty-six acquitted. Sentences ranged from one year in jail to the death penalty; twenty-nine death sentences were imposed but later commuted to life imprisonment. The defendants included forty-seven Jordanians or Palestinians with Jordanian passports, six Palestinians with other documents, forty-seven Iraqis, twenty-two Bedoons, twenty Kuwaitis, three Lebanese, five of other nationalities and fourteen tried *in absentia* of unknown nationality. With one notable exception, Kuwaiti defendants received lighter sentences than the others.²⁰⁶

Despite the Kuwaiti government's stated willingness to conduct the trials of suspected collaborators in accordance with basic standards of fairness,²⁰⁷ the actual proceedings were marred by serious violations

²⁰⁵ An older brother, Samir, a U.S. citizen who had lived in Kuwait most of his life, told Middle East Watch that "all the charges were false: they never joined any Palestinian organization and none of them ever possessed weapons or knows how to use them." He said that a Kuwaiti business partner, who was ready to testify on their behalf, was never allowed to address the court.

²⁰⁶ Ibtissam Bertu Selaiman al-Dakhil, a Kuwaiti citizen, was sentenced to death (later commuted to life imprisonment) in the *al-Nida'* case.

²⁰⁷ For example, on May 23, Minister of Justice Ghazi Obaid al-Sammar told the official Kuwaiti News Agency (KUNA): "The accused are accorded fair trials, with the right of legal defense respected with the help of lawyers. Trials are being conducted in public, with the press and other media present, unless the courts decide to hold secret sessions for the purposes of public order." On May 22, Minister of State for Cabinet Affairs Dhari Abdalla al-Othman told KUNA, "Kuwait is diligent in applying the rule of law and its absolute belief in human rights, regardless of nationality, gender or beliefs." By contrast, despite the clear constitutional presumption of innocence in Article 34 of the Kuwaiti Constitution, some Kuwaiti officials apparently believed that their laws "do not call for customs like...presumption of innocence until guilt is proven." (John H. Cushman, "Courts Watched Closely as Kuwait Resumes Trials," *The New York Times*, June 1, 1991.) Although this view contradicted the public stand of the Kuwaiti government, it

of the fair-trial principles set forth in Article 75 of Protocol I to the Geneva Conventions, which Kuwait has ratified. The courts relied primarily on confessions extracted by torture; denied defendants sufficient time to consult with lawyers; and failed to give defendants and their lawyers an opportunity to examine the evidence before trial, to cross-examine prosecution witnesses, or to present witnesses in their defense. The courts also seemingly ignored the varying degrees of loyalty that might legitimately be required of Kuwaiti and non-Kuwaiti citizens toward the Kuwaiti government-in-exile.

A substantial majority of the defendants on trial complained of severe beatings to induce them to confess to alleged crimes of collaboration, and in some cases signs of torture were clearly visible. These complaints were corroborated by extensive testimony collected by Middle East Watch showing the prevalent and systematic use of torture in Kuwaiti detention centers. However, rather than discard all confessions secured by coercion — the minimum required by fair-trial standards — the prosecution and the courts relied on these confessions as their main source of evidence. In very few cases did the prosecution introduce direct evidence against the accused, particularly on the often critical issue of whether the defendant had sufficiently resisted pressure to cooperate with Iraqi authorities.

In several cases, there was no apparent justification for trying the defendants before martial-law tribunals. For example, on June 5, two Yemeni boys aged eleven and twelve were tried for stealing clothes from an apartment. There is no evident reason why such cases could not be tried in the regularly constituted criminal courts.

The courts also violated the right of a defendant to be tried in his or her presence, which is one of the requirements of a fair trial under international law.²⁰⁸ Forty-two defendants, including thirteen who first received death sentences that were later commuted to life imprisonment, were tried *in absentia*, without any public showing that they had been formally notified of the charges against them.

more accurately reflected the practice of security officers after liberation, who usually assumed the guilt of suspects and condoned torture to extract confessions to prove that guilt.

²⁰⁸ Protocol I, Art. 75; International Covenant on Civil and Political Rights (Covenant), Art. 14.

After the first day of trials, the courts generally did appoint defense counsel for those without private counsel, and then adjourned the case to provide the newly appointed counsel an opportunity to consult with the defendant and prepare a defense.²⁰⁹ However, in several cases observed by Middle East Watch, the presiding judge appointed defense counsel and then immediately began vigorously cross-examining the defendant before the defendant had been given an opportunity to meet with counsel.

In the period preceding the martial-law trial, all defendants appeared to have been questioned by the prosecutor or police investigators without the opportunity to consult with counsel or notification of their right to do so. Although Kuwaiti domestic law does not specifically require legal counsel before arraignment, this law and practice violate Kuwait's duty under Protocol I to "afford the accused before and during his trial all necessary rights and means of defense."²¹⁰

Kuwaiti lawyers who announced their intention to defend suspected collaborators were subjected to abuse and threats.²¹¹ Whether because of this intimidation or the unpopularity of the defendants,²¹² only a small number of lawyers were willing to offer their services. Despite the need for additional lawyers, the Kuwaiti government refused to allow lawyers from other countries with similar legal systems to come to Kuwait to defend suspects. The Arab Lawyers Union and the Jordanian Bar Association both tried to send lawyers to Kuwait but the Kuwaiti

²⁰⁹ On the first day, May 19, trials proceeded and ended before counsel for several defendants had an opportunity to consult with their clients.

²¹⁰ Protocol I, Art. 75; see also Covenant, Art. 14.

²¹¹ See, e.g., Lee Hockstader, "Justice Goes on Trial in Kuwait," *The Washington Post*, April 3, 1991.

²¹² U.S. Army reservist Lieutenant Colonel Edward McCarty, a New York State judge who was a legal adviser to the U.S. Combined Civil Affairs Task Force, which advised the Kuwaiti government on legal matters, told *The Washington Post* (April 3, 1991) that in terms of community reactions to the trials, "this is a child molestation murder case times hundreds."

Embassies in Cairo and Amman refused to grant them visas.²¹³

Under Kuwait's State Security Law, defendants tried before martial-law tribunals had no right of appeal. Their sole recourse was to a purely advisory panel of three "legal counselors" established to advise the crown prince in his capacity as martial law governor on whether to exercise his discretionary powers of clemency.²¹⁴ The exercise of these powers was not guided by clear legal standards and as such could not substitute for a proper appeal, as required by Article 14 of the International Covenant on Civil and Political Rights. Furthermore, review procedures did not allow defense counsel to present arguments on behalf of their clients. In the end, this clemency process yielded reaffirmations of every conviction passed — all on the same day, before any attorney is known even to have submitted petitions for clemency to the Crown Prince. There is no evidence that the "legal counselors" were involved in the process. Most non-Kuwaiti citizens acquitted by martial law courts were later deported without judicial review of the deportation orders.²¹⁵

Seventy-two cases involving over two hundred suspects who were charged by the martial-law prosecutor remained unresolved by the time martial law was lifted and martial-law courts disbanded on June 26. These cases were reviewed by the civilian public prosecutor's office to decide whether they should be brought to trial before criminal or state-security courts. By the end of August, there were around 330 Palestinians, Iraqis, Kuwaitis, Sudanese and Egyptians awaiting trial before state-security courts. During August, the public prosecutor's office assumed control over pretrial interrogation of state-security defendants through a special

²¹³ Middle East Watch interview with Farouk Abu-Issa, secretary-general of the Cairo-based Arab Lawyers Union, June 5, 1991; Middle East Watch interview with Asma Khader, member of the executive committee of the Jordanian Bar Association, June 3, 1991. The Arab Lawyers Union is a Cairo-based federation of the national bar associations of most Arab countries, including Kuwait.

²¹⁴ Under Article 75 of the Kuwaiti Constitution, there is also an opportunity for a discretionary pardon by the emir.

²¹⁵ According to Minister of Justice Ghazi Obaid al-Sammar "The Minister of Interior has discretionary authority to deport people who are suspect or whose presence constitutes a danger.... [T]hose who have been acquitted will be deported according to this procedure." *Sawt al-Kuwait*, June 26, 1991.

department, the State Security Prosecution Division (*Niyabat Amn al-Dawla*). Muhammed al-Bannai, a newly appointed chief public prosecutor, decided to reinvestigate all pending cases. Some of the 330 defendants were cleared, but the majority were deported administratively. By the end of November, only eighty defendants charged with state-security offenses were left to be tried before state-security courts. No trial date has been set.

In the past, the State Security Court suffered from due process problems similar to those of the martial-law courts. The court was staffed by part-time judges who did not have security of tenure; it usually met in secret; and it issued decisions, including death sentences, that were not subject to appeal.²¹⁶

Following the international outcry over the martial-law trials, the Kuwaiti government in August issued Law 10 of 1991, amending Law 26 of 1969, which had established the State Security Court. Law 10 allowed the formation of more than one state-security court; it also established for the first time the right of appeal, although this right is more limited than from trials in traditional criminal courts. Under the new law, decisions by state-security courts can be appealed directly to the Court of Cassation. Under Law 40 of 1972, the Court of Cassation does not retry cases but examines the application of the law by the original court.²¹⁷

Although the new law still allows the indefinite detention of state-security suspects, detention beyond the first twenty-one days was made subject to the approval of a state-security judge, who also reviews the need for detention once every forty-five days. Hearings on whether to extend detentions are not attended by detainees or their lawyers, a human rights observer told Middle East Watch. In another innovation,

²¹⁶ The State Security Court in the past condemned defendants to death, but the death penalty was never carried out. Although most State Security Court sessions were held in camera, the opening and closing sessions were sometimes open to the press and other outside observers.

²¹⁷ Ordinary crimes can be appealed before the Appeals Court, the decisions of which can then be appealed to the Court of Cassation. Article 8 of Law 10 is ambiguous on whether state security court judgments are to be appealed before a special cassation court or before the already constituted Court of Cassation. The official working paper accompanying the new law, however, refers to the Court of Cassation as the court before which state security cases are to be appealed.

the new law allows the release of suspects, on bail or personal recognizance, at the discretion of the state-security prosecutor's office.

Between March and August, more than 1,500 residents of Kuwait were deported, including Bedoons, Iraqis and Palestinians. These expulsions violated several provisions of the Fourth Geneva Convention because of the inhumane manner in which they were carried out, because Kuwait expelled some who said they would face persecution in Iraq, and because some were stateless persons and should not have been expelled. Most of these expulsions took place without review by the ICRC. Since August, thousands have been deported after cursory hearings or were pressured to leave. Methods of pressure have varied from denial of employment to detention to beatings and death threats by State Security Investigative Police.

Most of those deported since liberation seem to have been individuals rounded up, in some cases with their families, as security risks, or as suspects in the campaign against collaborators with the Iraqi occupiers. Collaboration has been broadly defined to include almost any form of dealing with the Iraqi authorities, including keeping schools or shops open during the occupation. As noted above, the methods employed to prove such collaboration have been unreliable and legally unacceptable. Even those cleared of charges without trial or acquitted by martial-law courts have been subsequently deported.²¹⁸ After martial law was lifted on June 26, administrative deportation instead of trials became the favored method used to deal with security suspects.

Expulsions started shortly after liberation. During March, several bus loads of foreign residents were summarily expelled. They were left on the Kuwait-Iraq border without food, water or travel documents. They bore marks of beatings and other torture. U.S. troops at the border told reporters that several bus loads of similarly tortured foreigners had been

²¹⁸ Nahess al-Enezy, a spokesman for the Ministry of Justice, told a government newspaper that those acquitted would be deported. "Just because they were acquitted does not mean they are not still suspect. It only means that there was not enough evidence for their guilt," he explained. (*Sawt al-Kuwait*, June 27, 1991.) Another spokesman for the Ministry of Justice told Middle East Watch on July 6 that the Public Prosecutor's Office (in the Justice Ministry) had ordered the release of those acquitted but that the minister of interior still had discretionary authority to deport them and keep them in jail pending their deportation.

pushed across the border earlier in the month.²¹⁹

In April and May, deportations were on a limited scale, but in June, large-scale deportations started on a regular basis. On June 8, a group of forty-six people — including families with small children — were bused to the Iraqi border. On June 11, a group of 115 Palestinians, Sudanese, Yemenis and Iraqis — including twenty children — were expelled to Iraqi territory, as observers from the U.N. and ICRC looked on. The deportees were given no food, water or sleeping mats; they were forced to walk about one mile in a dark, mine-infested area, without flashlights, to reach the Iraqi checkpoint.²²⁰ Other reports received by Middle East Watch, including one by a Deportation Prison official, confirmed that at least some of those deported were sent against their will.

The Deportation Prison, located in al-Shuwaikh, west of Kuwait City, has been perhaps the busiest of all Kuwaiti prisons in 1991. It is a maximum-security facility, with some of the worst conditions in the country. It has twelve solitary confinement cells and one large wing, which holds as many as six to seven hundred people. There are no beds or mattresses; prisoners are simply given a blanket each. There is only one refrigerator for the prison and no air conditioning. Fans hang from a high ceiling but do not seem to alleviate the unbearable summer heat and poor ventilation.

Because of the large number of people being held pending deportation — averaging one thousand at any given moment — the main Deportation Prison at al-Shuwaikh has been filled beyond capacity. Other facilities are reported to have been opened to handle the overflow, but no information is available on conditions there.

On June 9, the ICRC visited the Deportation Prison for the first time but was not allowed to interview any prisoners. Four hundred more people were deported on June 23. According to Kuwaiti authorities, most were Iraqis, but international observers told Middle East Watch that the

²¹⁹ William Branigin and Nora Boustany, "Rights Officials: Kuwaiti Soldiers Commit Abuses: Arrests, Beatings, Deportations of Palestinians, Others Continue," *The Washington Post*, March 17, 1991; Bob Drogin, "Kuwaiti Reprisal Killings Continue," *The Los Angeles Times*, March 18, 1991.

²²⁰ John Arundel, "Kuwait Expels Foreigners Across Border Into Iraq," *The Washington Post*, June 12, 1991.

deportees were actually Bedoons.²²¹

On July 6, forty-one people accused of collaboration with the Iraqi occupation authorities were expelled. They were described as exhausted and bearing signs of torture.²²² On July 9, around three hundred "Iraqis" were deported, including whole families.²²³ Some 350 more "Iraqis" and others were deported on July 13.²²⁴ Over one hundred more were expelled on July 20 and on August 3, another one hundred were deported.²²⁵

After criticism was voiced by international humanitarian organizations over these summary expulsions, Kuwait allowed the ICRC to interview would-be deportees and monitor the expulsions. Since Kuwaiti law allows administrative deportation, the government took full advantage of its discretionary powers to expel hundreds of Bedoons, Iraqis and Palestinians summarily. Under Kuwaiti law, administrative expulsion orders can in theory be contested before the Administrative Court, but in practice most deportees are not given an opportunity to file such complaints.

Even if complaints were filed, the chances of winning are limited because Article 16 of the Kuwaiti Foreign Residents Act (1968) gives wide discretionary powers to security officials to deport non-Kuwaiti nationals, even if still holding valid residence permits, if the alien has "no visible means of financial support," or if "the Minister of Interior believes that the deportation is mandated by public interest, public security or public

²²¹ *Sawt al-Kuwait*, June 26, 1991; Middle East Watch interview, July 15, 1991.

²²² Agence France-Presse, July 7, 1991; "Koweit: Nouvelle vague d'expulsions," *Le Monde*, July 11, 1991.

²²³ Associated Press, July 9, 1991; *al-Hayat*, July 10, 1991. "Koweit: Nouvelle vague d'expulsions," *Le Monde*, July 11, 1991, reported that the Kuwaiti government authorized the ICRC for the first time to meet with this group of deportees before they were expelled.

²²⁴ Reuters, July 15, 1991.

²²⁵ Reuters, August 5, 1991. Iraq put the number of those expelled on August 3 at 247, listing them as comprising forty Iraqis, eighty-eight Jordanians and 119 Bedoons. Agence France-Presse, August 5, 1991.

morals." In the years 1980-90, before the Iraqi invasion of Kuwait, the Kuwaiti government frequently invoked the public-interest clause of this law to deport summarily thousands of its residents, including Bedoons.

The Kuwaiti government terminated the contracts of all of its Bedoon and foreign employees retroactively from August 2, 1990. This decision meant that besides losing their jobs, Palestinians — as well as other foreigners and Bedoons — were not paid for the period since the Iraqi occupation, unlike Kuwaiti employees who were paid whether they had worked or not. Despite promises that they would be paid their severance pay — generally one month's salary per year of employment — many have yet to be compensated.²²⁶ To encourage Palestinian government employees to leave the country quickly, their severance pay is kept in escrow and not given to them until they complete their departure arrangements.

The retroactive termination of the contract of all foreign-national employees, as well as Bedoons, means that those who are not rehired are deportable under the Foreign Residents Act, on the grounds that they have no "visible means of financial support," (Article 16.2) or because foreign-national government employees, once their jobs are terminated, are required to leave the country (Article 15).

The Kuwaiti government in 1991 initiated a process termed Foreign Residents Re-registration, the stated objective of which is to "regulate and streamline all resident permits, and discover those with expired or forged permits, and those who came during the Iraqi occupation."²²⁷ The Kuwaiti government gave foreign residents until November to re-apply for residency in Kuwait. That period was later extended until the end of the year. After December 31, if it is not again extended, those who have not secured employment risk summary deportation.

²²⁶ Foreign employees under class-A contracts are entitled to ninety-six percent of a month's salary for each of the first five years of employment and 144 percent of a month's salary for every year thereafter. Class-B contracts entitle a foreign employee to half of a month's salary for each of the first five years and a whole month's salary for every year thereafter. Per-diem employees and those hired under Class-C contracts are not entitled to severance pay under Kuwaiti Civil Service Regulations No. 6 of 1979 and No. 2 of 1982.

²²⁷ *Sawt al-Kuwait*, May 15, 1991.

The manner in which many of the expulsions have been carried out, as well as in some cases the deportations themselves, are in conflict with Kuwait's legal duties under international law and other international standards. Protected persons under Article 4 of the Fourth Geneva Convention are defined as "those who...find themselves, in the case of conflict or occupation, in the hands of a Party to the conflict or Occupying Power of which they are not nationals."²²⁸ Accordingly, persons protected by the Fourth Geneva Convention and Protocol I would include Iraqi, Palestinian and Bedoon residents of Kuwait. Most Bedoons and Gazan Palestinians, by virtue of their stateless status, and Iraqis, by virtue of their status as nationals of the principal Kuwaiti opponent in the armed conflict, are clearly protected persons when in the hands of the Kuwaiti government.²²⁹ Other Palestinians, whether citizens of Jordan or deemed to be under the protection of the Palestine Liberation Organization (PLO), are also protected persons since Kuwait has yet to resume normal diplomatic relations with either Jordan or the PLO.²³⁰ The ICRC has explicitly upheld the view that Palestinians in

²²⁸ Excluded from this definition are nationals of states not bound by the Fourth Geneva Convention, nationals of neutral and co-belligerent states with whom normal diplomatic relations are maintained, and persons protected by the three other Geneva Conventions of 1949. The stateless are also covered, according to the official ICRC *Commentary*, which states that "owing to its negative form the definition covers persons without any nationality." (Jean Pictet (ed.), *Commentary on the Geneva Conventions*, Geneva: ICRC, 1958, Vol. IV, p. 47). This view was made explicit by Article 73 of the First Additional Protocol to the Geneva Conventions, which Kuwait has also ratified.

²²⁹ A senior Egyptian official told Middle East Watch on July 22 that there are about 23,000 Gazan Palestinians in Kuwait with Egyptian travel documents. Sources in the Gazan community in Kuwait estimate the number to be between 20,000 and 30,000. Egyptian travel documents (*laissez passers*) do not grant their holders Egyptian citizenship or entitle them to residence in Gaza now that Israel is the occupying power. Israel has refused to permit many of these Gazans to return to Gaza.

²³⁰ Even if, despite their tilt toward Iraq, Jordan and the PLO were deemed to be neutral, they have not maintained normal diplomatic relations with Kuwait. The Jordanian foreign minister told the newspaper *al-Dustur* (June 13, 1991) that his government "is ready to open the embassy; however, it has not received

post-liberation Kuwait are protected persons.²³¹

For protected persons whom Kuwait does not allow to settle in its territory but who cannot, for any reason, be repatriated, a third country must be found where they will be received and allowed to settle.²³² Until such a country is found, refugees are entitled to the protection of the Fourth Geneva Convention, including the provision requiring Kuwait to ensure the means of subsistence, through paid employment or state allowance.²³³

Article 5 of the Fourth Geneva Convention excepts from protection an individual who is "definitely suspected of or engaged in activities hostile to the security of the state."²³⁴ But exception is allowed under the Convention only for *individuals* suspected of being security risks, while Kuwaiti officials have blanketed whole communities with collective guilt. Throughout the year, they referred to the collaboration with the Iraqi occupiers of the Palestinian and Bedoon *communities*. On November 21, Shaikh Ali al-Sabah, minister of defense, after warning about fifth columnists, said, "[T]he attitudes of certain communities was disgraceful; they cooperated with the occupation army." On December 12, Shaikh Sa'ad, the crown prince, continuing on a theme he began before

Kuwait's approval to do so." As reported in Federal Broadcast Information Service (FBIS), June 13, 1991. The PLO also provided diplomatic protection to Palestinians before August 2, 1990. Although its office was accredited as an embassy in 1988, the Kuwaiti government has refused to reaccredit it since liberation. The Kuwaiti Ministry of Foreign Affairs, in a statement distributed by KUNA and published in *Sawt al-Kuwait* (July 30, 1991), reiterated that "at the present time, there are no Palestinian diplomats accredited with the Ministry."

²³¹ Remarks of François Bugnion of the ICRC legal department, published in the ICRC Bulletin, May 1991.

²³² *Commentary*, IV, 64.

²³³ Article 39 of the Fourth Geneva Convention. See also *Commentary IV*, 249.

²³⁴ Article 5 cautions that "such person shall nevertheless be treated with humanity and, in case of trial, shall not be deprived of the rights of fair and regular trial." It also calls on the state to grant such person "the full rights and privileges of a protected person under the present Convention at the earliest date consistent with the security of the state."

liberation, warned of dangers from fifth columnists who have to be flushed out.²³⁵

As a result of relentless persecution during the year, the Palestinian community, which numbered more than 350,000 before the Iraqi invasion, was reduced to 80,000 by the beginning of November.²³⁶ Around 23,000 of these are Gazans carrying Egyptian travel documents that do not entitle them to settle anywhere.

During the Iraqi occupation of Kuwait, around 180,000 Palestinians left Kuwait to avoid the hardships of occupation and war. In many cases, they left behind their homes and property accumulated over decades of residence in Kuwait. Most went to Jordan but some had no country in which they were entitled to reside. After liberation, with very few exceptions, Kuwait has refused to allow any of them to return. The Kuwaiti government has failed to appoint guardians to protect absentee property and, on July 17, the Kuwaiti cabinet approved regulations allowing Kuwaiti landlords to remove furniture and other items from rented premises previously occupied by foreigners who are not being allowed to return.²³⁷

The other community targeted for persecution is the Bedoon, the long-term residents of Kuwait who have been denied Kuwaiti citizenship. They numbered more than 250,000 at the time of the Iraqi invasion, according to official figures. The persecution of the Bedoons, for a long time the undocumented underclass of Kuwait, picked up in 1986 when the government adopted a series of draconian measures to force them to leave the country. Mass dismissal from government jobs, large-scale deportation and restrictive bureaucratic measures were the tools of this policy. Other restrictions included Ministry of Interior Regulation No. 35 of 1987, which banned the issuing or renewing of driver licenses to Bedoons, and Interior Ministry Regulation 177 of 1986, which severely restricted their foreign travel.

²³⁵ Shaikh Ali's remarks are from *Sawt al-Kuwait*, November 21, 1991. Shaikh Saad's remarks are from an interview with the Saudi weekly *al-Majalla (The Magazine)*, December 12, 1991.

²³⁶ From remarks by Shaikh Ali al-Sabah in the government *Sawt al-Kuwait*, November 21, 1991.

²³⁷ *Sawt al-Kuwait*, July 18, 1991.

After liberation, this community was persecuted because certain of its members were suspected of collaboration with the Iraqi occupiers. Thousands were rounded up and most were thrown across the border to Iraq.

International standards clearly prohibit the expulsion of stateless Bedoons who have lived in Kuwait all their lives.²³⁸ The Kuwaiti courts in the past also rejected the government's attempts to treat Bedoons as foreigners in the application of the Foreign Residents Act of 1968, and recognized the special status to which the Bedoons were entitled.

All Bedoon government employees were dismissed retroactively from August 2, 1990, and few have been rehired. Like Palestinian children, Bedoon children were barred from enrolling in public schools after liberation. Most Bedoons cannot afford to send their children to private schools, especially after the government of Kuwait discontinued its pre-invasion fifty percent tuition subsidy.

As the Kuwaiti government started restructuring its armed forces, whose rank and file used to be predominantly Bedoon, it started rehiring Bedoons on a limited scale. In October, the government announced that it would pay private school tuition for children of Bedoons rehired by the armed forces. In another good-will gesture, the government announced that it would pay tuition fees for Bedoon children of Kuwaiti mothers.

There are about 3,700 persons, mostly Bedoon, who have registered with the ICRC and are stranded in Iraq. Kuwait has so far, with few exceptions, refused to allow these people to return to Kuwait. They registered "on the basis of documents certifying that they had been residents of Kuwait before the war," according to an ICRC official.²³⁹ The names of hundreds of Bedoons were initially submitted to the ICRC

²³⁸ Many Bedoons are also children of Kuwaiti mothers. Under Kuwaiti Nationality Law (70/1966), however, children of a Kuwaiti mother married to a non-Kuwaiti citizen do not automatically acquire Kuwaiti citizenship, unlike children of a Kuwaiti father married to a foreign mother.

²³⁹ Statement by Angelo Gnaedinger, ICRC Delegate General for the Middle East. ICRC Bulletin, November 1991. He added that the ICRC had forwarded this information to the Kuwaiti authorities, who "want to check each case to make sure that the person is indeed a citizen or resident of Kuwait and that his or her return is not a security problem."

by the Kuwaiti government as having been detained by Iraqi occupying forces and taken to Iraq during the occupation. At the time Kuwait demanded their release, but later official lists dropped the names of most Bedoons not affiliated with the Kuwaiti military or police.²⁴⁰

Another group of Bedoons refused admission into Kuwait were those stranded at a displaced persons camp in the middle of the desert at the Abdali border post. The camp population fluctuated, reaching a maximum of near five thousand in late May, including families with small infants. Harsh conditions at the camp and Kuwait's refusal to let its residents enter the country led to a sharp decline in the camp population as most of them decided to seek a less forbidding waiting place in war-ravaged Iraq while the Kuwaiti government decided their fate.

In early October, the Kuwaiti government allowed the United Nations High Commissioner for Refugees (UNHCR) to supervise the resettlement of those still at the Abdali camp. Close to six hundred were allowed into Kuwait, and the remaining seventy were sent to other countries of their choice.

After the end of the Iran-Iraq war in the summer of 1988, calls for restoration of the Kuwaiti National Assembly intensified. When the Assembly was dissolved on July 3, 1986, the government cited the war as one justification, but then failed to restore democracy when the war ended.²⁴¹ At the same time as the National Assembly was dissolved, the press in Kuwait was put under strict censorship, and public assembly of more than five people was banned. These restraints remained in place when Iraq invaded Kuwait.

After the Iraqi invasion, Kuwaitis — now dispersed in many countries — continued to call for a restoration of formal methods of dialogue between the Kuwaiti government and its people. Former members of the National Assembly and others called on the emir to reconvene the

²⁴⁰ For further discussion of this issue, see the chapter on Iraq and Occupied Kuwait.

²⁴¹ When members of the dissolved Assembly and their supporters held meetings in 1989 and 1990 to call for its restoration, the government responded violently. Kuwaiti security police used force to disperse the meetings and jailed some former parliamentarians who participated in them. The last of these incidents took place on May 15, 1990 — only ten weeks before the Iraqi invasion of August 2.

Assembly in exile and form a national unity government. In response, the government convened the Kuwaiti Popular Conference in Jiddah, Saudi Arabia, in mid-October 1990. A compromise was struck. It was decided that while restoration of the National Assembly in exile was not a practical option, constitutional rule would be restored after liberation and, until then, the government would hold formal consultations with Kuwaiti community leaders through the Supreme Advisory Council that was formed shortly after the conference. Headed by the crown prince, it included in its membership a number of opposition leaders. Though never explicitly stated, it was understood that soon after liberation, the 1962 Constitution would be fully restored and the National Assembly would be reconvened.

After the liberation of Kuwait, the Kuwaiti government avoided for over three months setting a date for new elections, despite persistent opposition demands that it do so. All opposition factions cited this delay in their refusal to join the new cabinet formed on April 20 and composed entirely of al-Sabah family members and close allies. As before the Iraqi invasion, al-Sabah family members were appointed to most of the key positions.

On June 2, when the emir announced that new elections for the National Assembly were to be held in October 1992, he also announced the revival of the advisory National Council, the nemesis of the constitutional movement. Until these elections are held, the government, dominated by the royal family, continues to rule by decree, as it has done since July 1986.

The principal Kuwaiti opposition since liberation has been composed of seven factions that include secular, Sunni and Shi'a religious groups.²⁴² An eighth group, the newly formed August 2 Movement of retired military officers, has also appeared on the scene. The seven principal factions articulated the following demands in a number of joint statements:

- o Restoration of the National Assembly through early elections to be held by the beginning of 1992.

²⁴² The seven are the Islamic Constitutional Movement and the Islamic Grouping (two Sunni religious groups), the National Islamic Coalition (a Shi'a religious group), and four secular groups: the Kuwaiti Democratic Forum, the Constitutional Movement, the Deputies Bloc and the Independents.

- o An end to restrictions on free speech and assembly, to allow candidates to campaign.
- o Repeal of the 1986 censorship law to enable all candidates to have a fair chance to express their views.
- o Dissolution of the National Council.

In a statement issued on May 15, 1991, the opposition groups criticized the government's human rights practices. They called for the release of all detainees held without charge, permission for relatives and defense lawyers to meet with prisoners, and an increased role for civilian prosecutors at police stations. They also called for open trials attended by international observers as well as judicial investigations into charges of human rights violations committed by security forces.

Considering the important decisions to be made in the twenty months between February 1991 and October 1992, including key decisions on restructuring Kuwaiti society, the opposition found the delay in holding the elections inexcusable. It also pointed out that the government would have an unfair advantage during the campaign since public assembly is still banned and expression severely restricted.

Kuwaiti apprehension about the government's intentions was fueled by two acts of violence directed at the opposition. On February 28, two days after liberation, an assailant shot prominent opposition leader Hamad al-Jau'an at his home in Kuwait City. The bullet hit his spinal column, paralyzing him. Immediately following the shooting, the Kuwaiti government announced that it had arrested three foreign residents, but it never formally charged them with the shooting. Al-Jau'an himself has emphatically said that his lone attacker was a Kuwaiti. His friends have publicly accused a militia loyal to members of the Sabah family of being behind the shooting. As a member of the National Assembly in 1985, al-Jau'an had led the questioning of a member of the ruling family, Minister of Justice Shaikh Selaiman De'aj al-Sabah, that led to his resignation amid allegations of corruption.

Another suspicious shooting of a government critic came on March 7, nine days after liberation. Hussein al-Bannay, a thirty-eight-year old Kuwaiti man, was shot dead during a political discussion in a *diwaniyya* when a gunman opened fire. While the assailant, who was described as a member of the armed forces or one of their militia allies, was immediately apprehended, he has not been formally charged or brought

to trial. When questioned about the incident, Kuwaiti officials told Middle East Watch that the shooting was accidental, an assertion which was contested by opposition figures contacted by Middle East Watch.

The Kuwaiti government has shown little tolerance for criticism of its officials. In at least two cases, defendants faced trials before the martial-law tribunals for their exercise of free speech. Farraj Nassar al-Rekaibi, a former Kuwaiti soldier and a Bedoon who became a hero for his anti-Iraqi resistance activities, was charged by the Kuwaiti government with "resisting the authorities and threatening the peace by spreading rumors" because of his public criticism of government decisions. He was detained for three months before being acquitted on June 3.²⁴³ Another defendant, Hamza Abdel Fattah Ahmed, a Palestinian, was tried and convicted of "insulting the person of the emir."

When prominent opposition leaders met on June 2 with Edward Gnehm, the U.S. ambassador to Kuwait, the official Kuwaiti government newspaper *Sawt al-Kuwait* bitterly criticized the meeting. In a June 7 editorial, the paper ridiculed the opposition leaders for seeking help from foreign embassies and referred to the U.S. ambassador as the "High Commissioner," a title used by Great Britain for its colonial representatives. The implication was that the opposition and the ambassador had compromised Kuwait's independence. The meeting followed the failure of negotiations between the government and the opposition on elections.

Opposition leaders also wanted a positive U.S. influence that would counterbalance the anti-democratic pressures from Saudi Arabia, which had contributed to the Kuwaiti government's decision to suspend parliamentary life in 1986 and later advised Kuwait to delay its resumption. Semi-official Saudi newspapers, one of which also criticized the meeting between the Kuwaiti opposition and the U.S. ambassador, have regularly attacked the Kuwaiti pro-democracy movement, claiming at one point that Kuwaitis did not genuinely desire a restoration of democracy.

On December 10, for the first time in Kuwait's history, the Kuwaiti Democratic Forum was openly declared a political party, challenging the

²⁴³ According to the government newspaper *Sawt al-Kuwait* (June 6, 1991), the statements attributed to him included criticism of the government's decision to dissolve the National Assembly and the government's lack of military preparedness on the eve of the Iraqi invasion.

traditional ban on political parties in Kuwait. The new party announced publicly the names of its twenty-one-member executive committee, which chose from among its members a seven-member secretariat headed by Abdalla al-Nibari, a veteran politician and former National Assembly member. The new party vowed to start pressing for free speech and assembly in preparation for the October 1992 elections. The government has had no public reaction to the announcement.

Kuwait still operates under strict censorship rules that were tightened in a July 1986 decree mandating prior censorship of all Kuwaiti publications. Daily newspapers have censors from the Ministry of Information in their offices who have to approve every item before the newspaper is allowed to publish. Repeal of this system of censorship, which was retained after Kuwait's liberation, has been a key demand of journalists and the political opposition. A meeting in October between the crown prince and Kuwaiti newspaper editors during which the subject was raised has yet to produce any positive results.

In addition to censorship of the print media, the Kuwaiti government owns and operates the television and radio stations, plus a number of newspapers and magazines, all of which express only the government's views and regularly attack its critics. The only local sources of independent information are the privately owned newspapers that resumed publication during the summer but remain subject to clearance by Ministry of Information censors.²⁴⁴

Ministry of Information censors are very strict about what is allowed to appear in print. For example, on December 10, a government censor refused to allow the publication of a statement by the Kuwaiti Association to Defend War Victims commemorating the Universal Declaration of Human Rights because it implied criticism of the government.

February 26, a daily newspaper that began publication a week after liberation and received government subsidies, was shut down less than a month later. The newspaper carefully avoided sensitive political issues but nevertheless criticized the slow pace of restoration of basic services. In its place, a more loyalist daily, *al-Fajr al-Jadid* (*The New Dawn*), was started, also with government financial support. The new publication makes no pretence of independence. In addition, the government owns and operates the daily *Sawt al-Kuwait*, published in London and printed by

²⁴⁴ Of the major pre-invasion dailies, only the conservative *al-Anba'* has not started publishing inside Kuwait.

satellite in several countries; every issue extols the virtues of the government and the royal family and often lashes out at the opposition. The opposition points out that since these publications are either wholly or partly financed with public funds, they should reflect a wider spectrum of views, especially in the coming election campaign period.

Kuwait's restrictions extend to foreign reporters. Immediately after the war ended, Kuwait encouraged hundreds of reporters to visit. One month after liberation, probably because of the highly unfavorable press that Kuwait was receiving at the time, the government started restricting access to Kuwait. For the month of April, the Kuwaiti Embassy in Washington told reporters that it was not issuing any visas. The stated reason was that there was not sufficient food or other supplies in Kuwait. This total ban was relaxed in early May as Kuwait initiated a procedure — still in effect — that limited the number of reporters who may be granted visas. Under this procedure, a Kuwaiti sponsor for the applicant is required. In effect, this meant that reporters must be invited by the government itself to obtain a visa.

Once in Kuwait, there have been reports of interference with journalists' work. In late July, an ABC crew filming the Foreign Registration Office was stopped by an officer who briefly detained one of the crew, demanded to see a permit that allowed filming, and then confiscated the film to view its contents. In early August, a Dutch film crew was followed by State Security Investigative Police while visiting a Palestinian neighborhood. A family interviewed by the film makers later received threats and one of its members, who had been arrested before and tortured, was redetained and questioned about the interview.

Freedom of expression is restricted outside of the press as well. When opposition leaders tried to hold a press conference on April 22 to voice their views on the newly formed cabinet, government forces disrupted the event and forcibly dispersed those who had gathered. On May 10 and 11, five members of the Islamic Constitutional Movement — an opposition group — were arrested at Kuwait International Airport because they carried unauthorized signs welcoming Kuwaitis returning from exile. In his comments on the incident, Minister of Interior Shaikh Ahmed Humood al-Sabah said that the men arrested had violated regulations banning the use of unlicensed signs.

Agreements by the Saudi-dominated Gulf Cooperation Council (GCC) have further restricted freedom of expression by banning from all GCC countries publications that are critical of the leader of any member

state.²⁴⁵ On December 14, Abdel Latif Mahmoud al-Mahmoud, a Bahraini professor, was arrested at Bahrain Airport upon his return home from a visit to Kuwait. The reason for his arrest, according to a Bahraini official, was that he had given a lecture in Kuwait deemed "contrary to the laws of the land which require people to be respectful to the heads of state in the area."²⁴⁶ It appeared that the official was referring to a December 9 lecture that al-Mahmoud delivered at the University of Kuwait. Entitled "The role of popular participation in political decision-making and the future of democracy in the region," the lecture was critical of the undemocratic nature of the traditional governments of GCC member states.

The Right to Monitor

Kuwait has acceded to only a few key international humanitarian treaties, most notably the four Geneva Conventions and their two additional protocols. Kuwait is not a party to the International Covenant on Civil and Political Rights, or other major human rights instruments relating to refugees and stateless persons.

Since liberation, the Kuwaiti government has refused to legalize the Kuwaiti Association to Defend War Victims. The Association was formed in March 1991 to monitor observance of human rights and provide assistance to families of detainees. Its founders articulated two key goals: documentation of human rights violations committed by the Iraqi occupying forces, and registration of all those who disappeared during the Iraqi occupation. The Association then undertook two additional tasks: to monitor Kuwait's observance of human rights and to provide relief to detainees and their families. The Association in Kuwait and was told in July to cease its operations, but as of December the government had not moved to forcibly close it down. It continues to operate from a vacant, government-owned school.

Although the International Committee of the Red Cross was allowed in Kuwait immediately after liberation, it was not allowed to visit any

²⁴⁵ The GCC, formed in 1981, is composed of Bahrain, Kuwait, Oman, Qatar, Saudi Arabia and the United Arab Emirates.

²⁴⁶ Reuters, December 15, 1991.

places of detention for several weeks. A number of prisons were not accessible to the ICRC until months later. By early December, the ICRC is known to have had access to all places of detention but still had not been permitted to see all detainees.

The United Nations High Commissioner for Refugees was also initially barred from opening an office in Kuwait, and the United Nations Relief and Works Agency (UNRWA) — the U.N. agency charged with Palestinian welfare — has not been allowed to operate.

During the Iraqi occupation, the Kuwaiti government-in-exile solicited the help of international human rights organizations in monitoring violations committed by Iraqi forces in Kuwait. After liberation, the government encouraged these organizations to visit Kuwait to gain proof of Iraq's gross abuses. But when these organizations also condemned abuses then being committed by Kuwaiti forces, the Kuwaiti authorities restricted access to the country. For six weeks, in April and May, the Kuwaiti Embassy in Washington refused to issue visas to representatives from Middle East Watch and the U.S. Committee for Refugees. Thereafter, international human rights organizations obtained access to Kuwait without difficulty.

U.S. Policy

One important factor in the explosion of abuse immediately following the liberation of Kuwait was the allies' failure to assign troops in appreciable numbers to patrol Kuwait City and deter abuses, despite the presence of thousands of troops in the country. Although violent abuses were rampant and, in the initial days following liberation, the Kuwaiti government showed no sign of an ability or intention to stop the violence, the allies made little effort to deploy and authorize troops to intervene to stop abuse. Potential trouble spots in Kuwait City, such as detention facilities and neighborhoods that had been targeted by returning Kuwaitis seeking revenge, should have been watched closely. Instead, applying rigid notions of sovereignty that bore little relation to the Kuwaiti reality at the time, the allies washed their hands of the problem, ignoring their central role days earlier in returning the Kuwaiti government to power. The allies' passivity, despite the obligation of all parties to the 1949 Geneva Conventions "to ensure respect for

the...Convention in all circumstances,"²⁴⁷ stood in sharp contrast to their ongoing active role in providing security against possible renewed aggression from Iraq and in helping to rebuild Kuwait's infrastructure.²⁴⁸

The role that allied forces might have played in curbing abuse was revealed by several witnesses interviewed by Middle East Watch, who described how U.S. troops who happened to have been present stopped Kuwaiti forces from abusing detainees. On other occasions, however, U.S. forces were less effective in combatting abuse, either because of their small numbers in the immediate vicinity or because of their limited authority and mandate. In one case reported to Middle East Watch, U.S. troops witnessing the beating of prisoners did nothing. In another case reported by *The Independent* of London, U.S. troops seemed to condone the beating of a Palestinian youth and to be bothered only by the presence of reporters.²⁴⁹

Upon liberation of Kuwait, the U.S. army deployed 3,500 troops known as Task Force Freedom. They included Special Forces who helped

²⁴⁷ Common Article 1.

²⁴⁸ An operation undertaken by the U.S. army in Kuwait was described as the largest civil affairs operation since the Second World War. It included the Kuwaiti Task Force, composed of fifty-seven army civil-affairs reservists who started planning reconstruction operations with the Kuwaiti government in December 1990. They included lawyers, doctors, engineers, a judge and other specialties. Later, Major General Patrick J. Kelly of the Army Corps of Engineers, head of the Defense Restoration Assistance Office in Kuwait, undertook the responsibility of supervising the Kuwait Emergency Reconstruction Office, a major reconstruction operation undertaken by the Corps of Engineers (John Kifner, "U.S. Army Doing the Work in Kuwait," *The New York Times*, April 5, 1991.) The Corps of Engineers will remain in Kuwait for some time, according to Colonel Curvee, its Public Information Director in Kuwait, in an interview with *Sawt al-Kuwait* on August 15, 1991. U.S. military officers also advised Kuwaiti legal authorities in the preparation of martial-law trials (Lee Hockstader, "Justice Goes on Trial in Kuwait," *The Washington Post*, April 3, 1991.)

²⁴⁹ Robert Fisk, "Kuwait Palestinians face gunmen's revenge," March 4, 1991.

Kuwaiti security forces take over police stations and man roadblocks.²⁵⁰ Special Forces were clearly visible in Kuwait throughout the first month after liberation but their mandate appeared to be a limited one. U.S. Lieutenant Colonel Ron Smith told *The Guardian* of London after he visited a number of detention centers where prisoners were reportedly being mistreated, "All I can do is ask the questions and hope that it has an effect."²⁵¹ Another report by *The Independent* quoted a U.S. military source as saying:

Our people on the ground didn't understand what their role was. Some of our senior officers were not reporting things up the channel. We would find that our Special Forces officers based in Kuwaiti police stations would know people were being tortured there but couldn't prove it. We would have American officers who would hear someone screaming but who couldn't say the man was being tortured because he wasn't witnessing it. So they would not report to us.²⁵²

The need to put an end to human rights violations committed by Iraq in Kuwait was one of the stated reasons that the U.S. Administration went to war against Iraq. In rallying support to wage war against Saddam, President Bush on numerous occasions condemned Iraqi atrocities. In his January 16 speech announcing the launching of Desert Storm, he stated that he could not wait any longer because Saddam Hussein had "subjected the people of Kuwait to unspeakable atrocities, and among those maimed and murdered, innocent children." In the same speech the President also said, "The terrible crimes and tortures committed by Saddam's henchmen against the innocent people of Kuwait are an affront to mankind and a challenge to the freedom of all." In his February 27 speech declaring that "Kuwait is liberated," President Bush said, "This is a victory for the United Nations, for all mankind, for the

²⁵⁰ John Kifner, "U.S. Army Doing the Work in Kuwait," *The New York Times*, April 5, 1991.

²⁵¹ Kathy Evans, "Watchdogs on trail of Kuwait abuses," April 14, 1991.

²⁵² Robert Fisk, "US evidence links emirate's ruling family with death squads murdering Palestinians," April 27, 1991.

rule of law, and for what is right."

Since the liberation of Kuwait, however, U.S. senior officials have shied away from publicly criticizing the serious human rights violations committed by Kuwaiti authorities against foreign and Bedoon residents. This reticence comes despite the enormous respect that most Kuwaitis have for the United States as the leading member of the alliance responsible for liberating their country. Moreover, many Kuwaitis believe that they require an ongoing U.S. military presence to ward off a perceived continuing Iraqi threat.²⁵³

During a June 12 hearing, Senator Ernest Hollings commented to Secretary of State James Baker: "Down in Kuwait...the torture and rape of Saddam continues under the Emir," noting that the proclaimed new international order "looks like...a new world disorder." Secretary Baker responded by emphasizing that the war was fought only to combat Iraqi aggression, suggesting that it was not waged to establish respect for human rights in Kuwait: "What we did...was to mobilize the international community to make it clear that unprovoked aggression by a big country against a little one isn't going to stand up. And we did it....We destroyed Iraq's military capabilities — Iraq, which constituted the greatest threat to the security of the Persian Gulf, and indeed the greatest threat to Israel's security — gone; military threat is destroyed."²⁵⁴ Kuwait "may not be the optimum type of regime," the secretary explained. Although "[i]t does not follow our standards, and it is not a full-fledged democracy," he praised it for its announcement that elections would be held, and its as yet unacted-upon willingness to enfranchise women.²⁵⁵ Most Kuwaitis,

²⁵³ Chris Hedges, "A Year Later, Kuwait Sinks Into Malaise," *The New York Times*, August 2, 1991; Comments by Shaikh Sa'ad Abdalla al-Sabah, *Sawt al-Kuwait*, July 3, 1991.

²⁵⁴ Hearing of the Commerce, Justice and State Subcommittee of the Senate Appropriations Committee, June 12, 1991.

²⁵⁵ David Hoffman, "Kuwaitis Defended By Baker," *The Washington Post*, June 13, 1991. In mid-April Secretary Baker described the emir of Kuwait and the crown prince as "very forthcoming," after they told him privately, "[T]here will be elections in 1992 and considerations are being given as well to voting rights for women." John M. Goshko, "Baker Presses Kuwait's Leadership," *The Washington Post*, April 23, 1991.

however, believe that the October 1992 date that the Kuwaiti government has set for elections is too distant, considering the important decisions that Kuwait must make in the interim. The delay also violates an understanding between the government and the opposition reached during the Iraqi occupation to hold early elections.

On granting women the right to vote, the Kuwaiti government has been even less forthcoming. The only public announcement made by Kuwaiti officials on this issue has been the emir's address to the nation on April 8, 1991, when he said that "the subject of participation of women in parliamentary life will be studied to ensure that women carry out their full role in the building of society and its progress."²⁵⁶ Later statements by Kuwaiti officials, such as the July 9 addresses by the emir and the crown prince to the first session of the National Council, seemed to further downplay the issue.²⁵⁷ In an August National Council meeting attended by the crown prince, a motion to discuss granting women the right to vote was defeated in favor of another motion to postpone the discussion indefinitely.

On May 20, 1991, one day after the beginning of martial-law trials in Kuwait, most of the State Department briefing was spent defending the summary proceedings. Despite universally expressed outrage at the travesty of the previous day's trials, spokeswoman Margaret Tutwiler, after having been briefed by Ambassador Gnehm, dwelled on the few positive aspects of the trials: They had been open, counsel had been present (though largely prevented from playing any meaningful role) and

²⁵⁶ As reported by KUNA, April 10, 1991.

²⁵⁷ While avoiding mentioning the women's vote, the emir said in his address: "We recall the supreme and bright role that women undertook...behind the resistance fighters, as wives and sisters, and even as resistance fighters themselves. They gave examples of heroism that history will admirably record, and Kuwait will proudly remember. The challenge propelled them in the face of the most difficult circumstances to provide for their homes and for Kuwait as a whole in spite of the siege of the [Iraqi] aggressors." The crown prince, who also avoided addressing women's right to vote, said in his speech: "The effective patriotic role of the Kuwaiti woman, whose great steadfastness as a mother, a sister, a wife, or as a daughter resisting the occupation inside Kuwait and fighting against it outside, made us proud and grateful. This role undoubtedly entitles her to an even greater role and fuller degree of contribution in the Kuwait of the future." Both addresses were published in *Sawt al-Kuwait* on July 10, 1991.

international observers had been in attendance. She did not see fit to note the other grave deficiencies, even after they were raised by reporters: the lack of a right to appeal, to consult a lawyer, to examine evidence prior to trial, to cross-examine prosecution witnesses, or to call defense witnesses. None of these concerns had been raised with the Kuwaiti government, she indicated. Moreover, she was unaware that many of the defendants had been tortured, despite extensive documentation of such torture by human rights organizations and by U.S. Embassy staff in Kuwait. The only criticism she voiced, referring to one of the cases summarily resolved the day before, was that "15 years for wearing a T-shirt is a little steep."

When Kuwait's crown prince decided to commute the death sentences, the State Department praised the move as "evidence that death sentences are given careful review."²⁵⁸ This comment came despite the crown prince's parallel decision to change all the death sentences to life imprisonment and to ratify unchanged more than one hundred other harsh sentences passed following proceedings lacking the minimum acceptable standards of a fair trial — all without any opportunity for defense counsel to be heard.

After Kuwait expelled 115 of its residents during the night of June 11, State Department spokesman Richard Boucher refused to comment, despite repeated questions from the press.²⁵⁹ Anonymous State Department officials let it be known that they did not believe the expulsions violated the Geneva Conventions,²⁶⁰ even though, as noted above, the deportees, including twenty children, were dumped by Kuwaiti military officers on the border with no food or water and forced to walk

²⁵⁸ From a briefing by spokeswoman Tutwiler on June 27. By contrast, Abdalla al-Nibari, a Kuwaiti opposition leader, attributed the commutation to pressure from Kuwait's Western allies, and added, "It is a political decision. It gives the impression of being made under international pressure, especially from the British government." He added that it was the wrong decision; the trials were defective and therefore defendants should be granted new trials. *Mideast Mirror*, June 27, 1991.

²⁵⁹ State Department briefing, June 21, 1991.

²⁶⁰ David Hoffman, "Kuwaitis Defended By Baker," *The Washington Post*, June 13, 1991.

a mile in darkness, through a mine-infested area, toward a nation (Iraq) where many justifiably feared persecution²⁶¹ — all in violation of specific provisions of the Geneva Conventions.

The Kuwaiti ambassador to the United States told a reporter that President Bush had said to him during a visit to the White House, "We didn't fight this war for democracy or those trials. Don't be intimidated by what's going on."²⁶² The White House did not contradict this statement. The president himself said later at a July 1 press conference in response to a question about post-war "atrocities" in Kuwait: "The war wasn't fought about democracy in Kuwait. The war was fought about aggression against Kuwait." He said that he understood the rage Kuwaitis felt, recalled what had happened in France after the Second World War when "the people that were liberated did not take kindly to those that had sold out to the Nazis," and then added, "I think we're expecting a little much if we're asking the people in Kuwait to take kindly to those that had spied on their countrymen that were left there, that had brutalized families there and things of that nature."²⁶³ It is difficult to imagine a more forceful apology for abuse.²⁶⁴

Criticisms of the human rights situation in Kuwait have not been wholly lacking in official U.S. statements. Ambassador Gnehm has expressed public concern, most notably in a June 6 speech to the Kuwaiti Chamber of Commerce, in which he said: "[T]hose who broke Kuwaiti laws and were parties to Iraqi criminal actions should be prosecuted fairly and fully under the law. But the innocent should not become new

²⁶¹ A woman deportee cried, "Please don't leave us here! Saddam people will surely kill us." *The Washington Post*, June 12, 1991.

²⁶² Jonathan Broder, "Kuwait will expel most Palestinians, ambassador says," *The Orange County Register*, June 17, 1991.

²⁶³ The text as released by the Office of the Press Secretary at the White House (Kennebunkport, Maine), July 1, 1991.

²⁶⁴ The Kuwaiti government daily *Sawt al-Kuwait* featured the President's comments on its July 3 front page under the headline, "Bush declares his understanding of Kuwaitis' attitude toward collaborators: 'We would be asking a lot if we asked them to show mercy,' he says."

victims."²⁶⁵ Another exception was a November 20 statement by Edward Djerejian, the newly appointed assistant secretary of state for Near Eastern and South Asian affairs. He told the House Subcommittee on Europe and the Middle East that the United States was pressing countries in the region, including Kuwait and Saudi Arabia, to move ahead with democratic reform. However, such occasional and welcome statements have been substantially overshadowed by the signals sent by more senior Administration officials, including President Bush and Secretary Baker, that ending human rights abuses in Kuwait is not a primary U.S. concern.

The Administration's failure to provide a strong voice in defense of human rights in Kuwait is even less excusable in light of the substantial, ongoing U.S. presence in the country. Although most of the U.S. forces were withdrawn from Kuwait by the end of May, leaving only about 1,500 regular troops in Kuwait itself by early December, the U.S. commitment to the defense of Kuwait is not in question.²⁶⁶ There are several hundred U.S. Army Corps of Engineers personnel involved in various reconstruction projects in Kuwait, and the United States still maintains a sizable military presence in the Gulf, including over 16,000 Navy, 11,000 Army and 5,000 Air Force personnel. The September 20 military agreement signed in Washington by the two countries' defense ministers formalized the U.S.-Kuwait military alliance. This ten-year pact provides for U.S. Navy access to Kuwaiti ports and the prepositioning of military equipment. It also regulates the planned frequent joint military maneuvers.²⁶⁷ According to Kuwait's Defense Ministry officials, who said that not all treaty clauses have been made public, the agreement calls for close U.S. involvement in developing the Kuwaiti armed forces, advising Kuwait on defense matters, training Kuwaiti officers in the United States, and supplying the Kuwaiti military with necessary hardware.

²⁶⁵ Reuters, June 8, 1991.

²⁶⁶ Although these troops are scheduled to withdraw by the end of the year, under the September 19 defense agreement, there will be frequent rotations through regular joint exercises.

²⁶⁷ Eric Schmitt, "U.S. and Kuwait Sign Pact on Troops," *The New York Times*, September 20, 1991.

Since signing the defense pact, the two countries have held a number of high-profile live-fire joint exercises that emphasized the continued presence of U.S. firepower, according to one expert.²⁶⁸ Between October 23 and 24, joint exercises involving land forces were held in al-Rawdhatain in northern Kuwait. Joint U.S.-Kuwaiti maneuvers with live ammunition were again conducted for over six weeks starting on November 6 involving the land, sea and air forces of both countries.²⁶⁹

Brigadier Ali al-Mumin, the Kuwaiti commander of the joint exercises, said that the Kuwaiti armed forces would not be in a position to enter combat on their own for the foreseeable future. Until it is able to augment significantly its ten-thousand-strong army, Kuwait would rely for its defense on the U.S. military and other Gulf forces. To provide for this defense, the two Kuwaiti air bases (Ali al-Salem and Ahmed al-Jaber) would be "inter-operable" with U.S. forces as part of future defense plans.²⁷⁰ These bases are being upgraded by the U.S. Army Corps of Engineers at a cost of \$350 million, which will be paid by Kuwait.²⁷¹

On September 20, the Kuwaiti Investment Authority, a government fund, signed a \$2 billion export credit agreement with the U.S. Export-Import Bank. The agreement, the first of its kind, would extend credit to American companies signing reconstruction contracts with the Kuwaiti government.²⁷²

In contrast to the Administration's public silence on human rights abuses in Kuwait, a significant number of members of the U.S. Congress voiced their criticism of Kuwait's human rights violations in letters to the Kuwaiti government and to the Administration:

²⁶⁸ Rear Admiral Ray Taylor, as quoted in Mark Nicholson, "Kuwait's forces 'not ready for combat'," *Financial Times*, November 18, 1991.

²⁶⁹ Agence France-Presse, November 17, 1991.

²⁷⁰ Mark Nicholson, "Kuwait's forces 'not ready for combat,'" *Financial Times*, November 18, 1991.

²⁷¹ *Sawt al-Kuwait*, September 20, 1991.

²⁷² *Sawt al-Kuwait*, September 22, 1991.

- o On April 19, thirty-five representatives sent a letter to President Bush outlining human rights violations in Kuwait and asking for the president's assistance "because United States civil affairs officers are responsible for maintaining public security in Kuwait." They pointed out that "the U.S. has a direct role to play in ensuring that human rights abuses in Kuwait cease immediately."
- o On July 16, sixteen senators sent a letter to the emir calling for fair trials and a limit on expulsions.
- o On September 26, twenty-three senators sent a letter to the Kuwaiti ambassador to the United States expressing their "continuing concern about human rights Kuwait." They also called upon the Kuwaiti government "to take steps to end abuses and prosecute those responsible."
- o On November 14, twenty-one senators sent a letter to President Bush urging him to issue an executive order providing temporary immigration relief for several hundred families living in the United States who had been airlifted from Kuwait during the Gulf crisis. The president issued the order benefiting primarily Palestinian families with U.S.-born small children whose return to Kuwait was barred by the Kuwaiti government. As mentioned above, Kuwait has denied reentry to the 180,000 Palestinians who left Kuwait during the crisis.

The Work of Middle East Watch

During the first two months of the year, Middle East Watch continued to monitor human rights abuses by the Iraqi occupying forces in Kuwait. It also continued its monitoring of Kuwait's constitutional movement. On January 12, Middle East Watch testified before the House Foreign Affairs Committee on four issues on which the Committee had requested testimony: human rights conditions in Iraqi-occupied Kuwait, human rights conditions in Kuwait before the invasion, human rights conditions in Iraq, and U.S. human rights policy in the wake of the invasion. Middle East Watch also provided information to the Committee on the Kuwaiti constitutional movement and voiced concern about the future of democratic reform in Kuwait in light of the Kuwaiti

government-in-exile's reluctance to make firm promises about its post-liberation plans.

On March 7, Middle East Watch issued a newsletter, "POWs, Wounded and Killed Soldiers," in which it called on Iraq to release all Kuwaiti detainees captured during Iraq's occupation of Kuwait. It also cautioned against reprisal killings or mistreatment of Iraqi prisoners in allied hands, including those in Kuwait.

During March, Middle East Watch sent a mission to Kuwait to investigate human rights abuses. The mission investigated extrajudicial killings and detention conditions. It also interviewed scores of victims of Iraqi abuse. While in Kuwait, Middle East Watch met with Kuwaiti, American, British and Palestinian officials and coordinated its activities with international humanitarian organizations present in Kuwait at the time.

On March 20, Middle East Watch held a press conference in Kuwait on post-liberation human rights violations. It chose to publicize its preliminary findings because of the urgency of the situation and the need to put an immediate stop to the flagrant abuses then being committed. Middle East Watch also publicized its findings through extensive interviews given to the international media in Kuwait. When the mission returned to the United States, Middle East Watch met with Administration officials to convey its findings and solicit their help in putting an end to Kuwaiti abuses.

In late May and early June, Middle East Watch sent another mission to Kuwait to monitor martial-law trials and update the earlier findings. Its representatives attended a number of key trials and helped in raising international concern regarding the lack of fairness of those proceedings. Their investigation of detention conditions and extrajudicial killings led to the discovery of mass graves in which fifty-four unidentified bodies were buried in al-Rigga cemetery.

On June 11, Middle East Watch presented its findings regarding Kuwait before a joint meeting of the House Subcommittees on Europe and the Middle East and on Human Rights and International Organizations. In addition to information about extrajudicial killings and torture in Kuwaiti prisons, the testimony discussed the official Kuwaiti reluctance to make progress toward restoring democratic rule and freedom of speech.

On June 18, Middle East Watch sent a letter to the emir of Kuwait, later released to the press, detailing the shortcomings of the martial-law trials and deploring the harsh sentences passed by the courts based on

dubious evidence. On June 26, the day that martial law was lifted, Middle East Watch issued a statement welcoming the disbanding of the martial-law courts and the commutation of death sentences to life imprisonment. However, the statement criticized the administrative review of martial-court judgments that had ratified all sentences other than the death penalty.

On September 11, Middle East Watch released a report, *A Victory Turned Sour: Human Rights in Kuwait Since Liberation*, which documented human rights violations committed by Kuwaiti forces. In addition to documenting violent abuses of the post-liberation period, the report drew attention to Kuwait's policy of employment discrimination and summary expulsion of its Palestinian and Bedoon residents. A formal request by Middle East Watch to Kuwaiti authorities to discuss its findings in this report was not answered.

On October 23, Middle East Watch issued a newsletter, "Nowhere to Go: the Tragedy of Palestinians in Kuwait," in which it reiterated its concerns regarding Kuwait's harassment of Gazan Palestinians carrying Egyptian travel documents. It pointed to Kuwait's obligation under the Fourth Geneva Convention not to expel these stateless persons.

Throughout the year, Middle East Watch worked with congressional offices attempting to focus the attention of the U.S. Administration and the Kuwaiti government on the human rights violations committed by the Kuwaiti government.

Middle East Watch also has worked with refugee-support groups and lawyers representing hundreds of asylum seekers from among former residents of Kuwait stranded in the United States, Canada and Europe as a result of Kuwait's refusal to permit their return.

Articles by Middle East Watch staff and committee members on human rights in Kuwait appeared in *The New York Times*, *The New York Review of Books*, *The Atlanta Journal-Constitution*, *Middle East Report* and *The Journal of Palestine Studies*. Interviews were also given on major American and foreign radio and television programs. Middle East Watch reports on Kuwait received extensive media coverage worldwide.

MOROCCO AND WESTERN SAHARA

Human Rights Developments

King Hassan II took several dramatic steps affecting human rights in 1991, including releasing hundreds of political prisoners, closing down the secret detention center of Tazmamart, and endorsing a new law limiting the length of incommunicado detention. The public discussion of abuses was also freer than in previous years. While these developments helped to improve the overall human rights picture and raise hopes for continued progress, they did not alter the laws and institutions responsible for the systematic nature of abuses in Morocco.

Repression during and after the Persian Gulf war revealed how tightly authorities continue to restrict political expression. Detainees under interrogation were routinely tortured and subjected to trials that failed to adhere to international standards of due process. Demonstrations and public meetings organized by opposition parties, trade unions and human rights organizations were often restricted, and publications were seized or banned because of their political content.

The Moroccan judicial system is stacked against persons arrested on political or security grounds. Suspects are often tortured by the judicial police (*police judiciaire*) during incommunicado (*garde à vue*) detention until they sign a confession, and are then convicted on the basis of that confession alone. Morocco's judges, who are appointed by the executive branch, tend to dismiss summarily defense motions to examine evidence of torture or procedural irregularities during interrogation.

Abuses of this nature were experienced by many of the suspects arrested in connection with riots that took place in Fez, Tangier and other cities on December 14 and 15, 1990, and by persons arrested for participating in "illegal" pro-Iraq demonstrations before and during the Gulf war.

As of March 1991, some 850 Moroccans had been sentenced to up to fifteen years in prison in connection with the December riots, in trials of up to eighty-five defendants at a time. Most of the defendants had been charged with participating in the looting and violent demonstrations that broke out on December 14, the day that a general strike was declared by two major unions. Many of these defendants, as well as persons arrested for demonstrating during the Gulf war, were subjected

to irregularities in arrest and pretrial procedures, and were convicted in unfair trials in which defense lawyers were given almost no time to prepare and judges dismissed motions to examine evidence of torture.²⁷³

As rare as it may be for a defendant's allegations of torture to be examined by a judge, it is even more unusual for physical abuse to lead to punishment of the responsible parties. Middle East Watch is aware of no member of the security forces who has been charged with using excessive force in suppressing the December 1990 riots or any subsequent demonstration or disturbance. Only one case of abuse in detention led to legal action in 1991: six Casablanca policemen were arrested and charged in connection with the death of Lamseguem el-Hachmi, a thirty-six-year-old peddler and an activist in one of the legal opposition parties, who was arrested in a sweep of street vendors on September 21 and died the same day.²⁷⁴

New limits on the duration of incommunicado detention and preventive detention (when a person is administratively placed in custody but not held incommunicado) were proposed by the officially created Consultative Council on Human Rights, described below, and approved by the king and Parliament in early 1991. To date, however, these reforms have not been promulgated.

The proposed law would make the following changes:

- o Incommunicado detention would be limited to four days except for a single extension for the same period when the investigation involves offenses against the internal or external security of the

²⁷³ See Amnesty International, "Morocco: Update on Human Rights Violations," March 1991. The independent Moroccan Organization for Human Rights also denounced unfair trials of both groups of defendants in communiques of January 9 and 23, 1991. The latter describes how, on January 22, a court of first instance in Fez refused a defense motion to order a medical expert to examine marks on the bodies of the defendants who had been arrested four days earlier in a demonstration.

² *Libération (Rabat)*, November 15, 1991. Morocco has signed the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, adopted by the U.N. General Assembly in 1984, but has not yet ratified it.

state. The current legal maximum in nearly all cases involving state security is twelve days. However, a 1971 law would remain on the books and allow authorities to exceed the new eight-day limit for offenses against state security in which the suspects are military personnel, or for certain offenses against state security in which the suspects are civilians.

- o The new law would not give a detainee the right to legal counsel while being held incommunicado, but would allow a lawyer to be present when the detainee is brought before a prosecutor or judge at the end of his incommunicado detention.
- o The new law would also limit preventive detention to two months, with up to five two-month renewals permitted when the investigation involves a grave crime and an order with an explanation is issued each time by a judge. Currently, preventive detention orders can be renewed indefinitely.

The proposed law would be a step in the right direction. According to lawyers active in the independent Moroccan Organization for Human Rights (OMDH), the "spirit" of the law has already contributed to a reduction in the mistreatment of incommunicado detainees. However, the proposed legal limit of eight days on incommunicado detention would not by itself eliminate the torture of suspects, which regularly has occurred during the initial days of detention. Even under the new law, no independent persons are allowed access to detainees while they are being held incommunicado. Only enforcement of the procedural and criminal safeguards against torture will deter abuse.

There are several hundred unresolved cases of suspected disappearance in Morocco. Most, but not all, involve Western Saharans, or Sahrawis. The government denies that it is holding any Sahrawis after releasing more than three hundred since June.

The release of the Sahrawis was one of two dramatic improvements in 1991 with regard to disappearances in Morocco. The other was the closure in September of the secret detention center of Tazmamart, where sixty-one military personnel had been transferred in 1973 and held

incommunicado since then in appalling conditions.²⁷⁵ These measures were major breakthroughs on two issues that previously the government had refused to address publicly.

However, the breakthroughs were of limited scope. In neither case was any official information provided about those who had died while in secret detention. Furthermore, several hundred Sahrawis remained unaccounted for, and may still be in Moroccan custody, despite official denials.

The inmates at Tazmamart had been sentenced to terms ranging from three years to life in prison for their roles in two abortive coup attempts in 1971 and 1972. None of them — not even the more than fifty who had completed their terms — was freed.

In September, after years of denying the existence of Tazmamart, officials who insisted on anonymity indicated to the press that the detention center had been razed. Even then, the government continued to stonewall. It did not confirm who had been released and provided no information about the thirty inmates of Tazmamart who are believed to have died during their years of incarceration. Information was difficult to obtain also because the released inmates and their families were terrified to speak to outsiders. While it is known that two prisoners who had not yet completed their sentences were transferred to Kenitra prison, it was still not possible to ascertain as this report went to press how many of the remaining inmates had been released.

Similarly, authorities provided no information when they released more than three hundred Sahrawis in the weeks following the king's declaration of a June 12 pardon for what the official press agency described as "all Sahrawis arrested during military operations or because of their secret agreement with enemies of the Kingdom's territorial integrity."²⁷⁶ They had been arrested between 1975 and 1987, most on the apparent grounds that either they or family members were allegedly members or sympathizers of the Polisario Front, the guerrilla movement fighting for the independence of the Western Sahara. Their

²⁷⁵ One inmate was permitted to correspond infrequently with his American wife. All other letters to the outside world had to be smuggled out. See generally Middle East Watch, "Deaths in a Secret Detention Center," April 1990.

²⁷⁶ *Maghreb Arab Presse*, English service, June 13, 1991, as reported in Foreign Broadcast Information Service (FBIS), June 17, 1991.

release was the first official confirmation that any Sahrawis had been in Moroccan custody.

The disappeared Sahrawis had been held under harsh conditions and deprived of all contact with the outside world. According to Amnesty International, at least forty-three inmates are said to have died at the secret detention center of Qal'at M'gouna, and hundreds more Sahrawis remain unaccounted for.²⁷⁷

Human rights and humanitarian organizations have drawn up lists of Sahrawis who are still missing after the pardons, and have called on Morocco to provide further information on any other unacknowledged prisoners it may have held or is continuing to hold. Morocco's denial that it has any Sahrawis in custody is suspect in view of Morocco's past record of deception concerning these disappearances, and information collected by Amnesty International from recently released Sahrawis.

In addition to the Sahrawis, King Hassan pardoned forty political prisoners who had been convicted for politically motivated offenses on August 16, including some of Morocco's longest-held prisoners who had been incarcerated for the peaceful expression of their views. These included Mohamed Srifi and Abderrahmane Nouda, arrested in 1974 and sentenced respectively to thirty years' and life imprisonment in an unfair trial in 1977 for founding illegal Marxist organizations and plotting to overthrow the monarchy; and Ali Idrissi Kaitouni, who received a fifteen-year prison sentence in 1982 on charges related to a book of political poems he had written. He was tried on charges of insulting the king and state institutions, inciting crimes against the internal security of the state, and publishing material liable to endanger public security.

The Ministry of Information announced that the pardon had been granted to prisoners who, "after having strayed from the national consensus, had recognized that the regained Western Sahara was Moroccan, and asked the King to bestow upon them his general benevolence and blessing."²⁷⁸ Twelve of the pardoned prisoners promptly signed a statement denying that they had made any such

²⁷⁷ "Morocco: Amnesty International's Concerns, February-June 1991," July 1991, pp. 5-6.

²⁷⁸ Agence France-Presse, August 15, 1991.

profession.²⁷⁹

The most prominent prisoner released in 1991 after having been held for the peaceful expression of his views was Abraham Serfaty, the engineer and activist in the outlawed Marxist group *Ila al-Amam* (*Forward*), who was given a life sentence in the same trial as Nouda, Srifi and 136 others in 1977 for founding illegal organizations and plotting the monarchy's overthrow. The king had resisted growing international pressure to release Serfaty, insisting that the possibility of a pardon was hindered by Serfaty's refusal to declare that the Western Sahara was Moroccan territory. In July 1991, just two months before changing his mind, the king told a French television interviewer, "As long as this man does not recognize that the [Western] Sahara is Moroccan, there will be no royal pardon for him."²⁸⁰

The manner of Serfaty's release on September 13 occasioned criticism, since he was summarily expelled the same day to France. The government justified his deportation on the grounds that "a thorough examination of Serfaty's legal status revealed that he could not lay claim to Moroccan nationality," but was in fact Brazilian.²⁸¹ No explanation was provided to explain how this discovery was made after Serfaty had served seventeen years of a life sentence, and most observers dismissed it as a flimsy pretext for removing him from Morocco. Serfaty also protested that three of his political associates who had been tried with him in 1977 — Ahmed Ban Nacer, Abdullah el-Harif and Ahmed Rakiz — remain in prison. (All three are believed to be held for the peaceful expression of their views.)

The OMDH estimates that some 180 political prisoners remain in Moroccan prisons, of whom a majority are prisoners of opinion and a minority were convicted of politically motivated acts of violence. The

²⁷⁹ Agence France-Presse, August 22, 1991.

²⁸⁰ "L'immigration ne doit pas tendre vers l'intégration," déclare le roi Hassan II," *Le Monde*, July 23, 1991. The Moroccan ambassador to the United States, Mohammed Belkhat, told Middle East Watch in April that the only obstacle to Serfaty's release was his refusal to ask the king for a pardon, as other political prisoners were said to have done.

²⁸¹ Serfaty's grandfather had reportedly lived for a long time in Brazil. *Libération* (Paris), September 14-15, 1991.

OMDH list excludes those who had been sentenced in connection with the riots in December 1990 and the Gulf war demonstrations, as well as Western Saharans. The Paris-based Association for the Defense of Human Rights in Morocco (ASDHOM) counts some 750 political prisoners including the OMDH categories as well as those persons convicted in connection with the Gulf war demonstrations and major disturbances that took place in 1981, 1984 and 1990.

The same arbitrary and personalized style of vindictive justice that was reflected in the Serfaty case was even more glaring in the king's treatment of the widow, six children, and cousin of former Defense Minister General Mohammed Oufkir. After General Oufkir was apparently executed for allegedly attempting a coup in 1972, the king put the Oufkir family in indefinite secret detention for no apparent reason other than their relation to the general.

The Oufkir family remained confined for over eighteen years, despite international appeals for clemency. Finally, in March 1991, the government announced that the family was free to leave the farm near Marrakesh where they had been held most recently under house arrest. The Oufkirs moved to Rabat. However, while able to travel inside Morocco, they remain under surveillance, are unable to travel abroad, and face other government-imposed obstacles to resuming a normal life, according to the most recently available information.

The right to travel abroad is one of many rights that are commonly denied to former prisoners who have been convicted of political and politically motivated offenses, including those who have been pardoned. Despite an announcement in 1990 by Minister of Interior Driss Basri that passport application procedures would be simplified, many former political prisoners found that they could not leave the country because their applications were never processed.

The rights of association and assembly were violated frequently in 1991. After committing some 1,300 troops to the U.S.-led military buildup in the Persian Gulf, King Hassan seemed to have been caught off-guard by the intensity of opposition to the war against Iraq. The government allowed a few mass rallies where people could give vent to their feelings, but otherwise sought to muzzle dissent.

In an interview on January 15, the king claimed to have arranged with political leaders to ensure that each party organized its own demonstration in a different city and no party staged a demonstration in

a city where a rally organized by another party had already taken place.²⁸² But, the king threatened, "if there is the slightest hint of disorder, we [meaning the king himself] will declare a state of siege, as the Constitution and the law empower us."²⁸³ When some opposition parties began urging the withdrawal of Moroccan troops from Saudi Arabia, he warned that criticism of the army's overseas mission constituted an attack on the morale of the troops and was prosecutable.²⁸⁴

Most applications to hold pro-Iraqi rallies in January and February were either turned down or ignored by the authorities. But, at the last minute, the king decided to allow a general strike called by opposition parties and trade unions in solidarity with the Iraqi people on January 28.

Bowing to popular hostility toward the U.S.-led war in the Gulf, the king also authorized a joint march organized by five leading opposition parties in support of the Iraqi people on February 3 in Rabat. An estimated 300,000 persons marched on that day. According to *Agence France-Presse*, a contingent of more than ten thousand highly disciplined supporters of the officially illegal Islamist movement were among the marchers.²⁸⁵

Most applications to hold pro-Iraqi rallies in January and February were either turned down or ignored by the authorities. A march planned for February 24 in Casablanca by a group of unions and opposition parties was forbidden by the Ministry of Interior on the grounds that it "was of a type that would disturb the public order."²⁸⁶

²⁸² The Moroccan League for the Defense of Human Rights and the Moroccan Association for Human Rights protested one week later the government's ban on demonstrations organized by more than one opposition party.

²⁸³ Moroccan television in Arabic, as reported in FBIS, January 16, 1991.

²⁸⁴ *Agence France-Presse*, February 2, 1991.

²⁸⁵ *Agence France-Presse*, February 3, 1991. See also "Moroccans March in Support of Baghdad," *Financial Times*, February 4, 1991.

²⁸⁶ *Agence France-Presse*, February 18, 1991.

While various unauthorized demonstrations around the country were permitted to run their course, others were broken up by security forces using truncheons, sticks and sometimes tear gas. Over four hundred people were arrested for participating in demonstrations. According to Amnesty International, most were released after a few hours or days, but about one hundred were brought to trial and sentenced to up to fifteen months in prison on charges that included unauthorized assembly on the public highway and disturbing public order.²⁸⁷

Like demonstrations, public meetings were sometimes prevented by the failure of sponsors to obtain the required permit. Under a 1973 law, meetings can be banned if the responsible authority determines that "the holding of the meeting would disturb or possibly disturb public order." More often, meetings are effectively prevented when authorities fail to respond to the application submitted by the sponsors.

At the beginning of 1991, the *al-Mawahib* (the Talents) cultural association was prevented from holding a colloquium in Casablanca. In March, the Moroccan Human Rights Organization failed to obtain permission to hold a colloquium in Casablanca on the Gulf crisis. In October, representatives of a group of unemployed university graduates were refused permission without explanation to hold a meeting in Casablanca.

Morocco's opposition press continued to test the limits of expression in 1991. It gave increasing coverage to human rights abuses, including the once-taboo topics of Tazmamart, political prisoners, and secret centers of detention. Such boldness incurs risks in a country where it is a punishable offense to advocate political systems other than a monarchy, to question Morocco's claim to the Western Sahara, to insult the king or Islam, or to defame or spread "false news" about public institutions.

While few journalists are sent to prison, many receive suspended sentences or are ordered to pay fines. In December 1990, the director and editor of *al-Ittihad al-Ishtiraki* (Socialist Unity), the daily organ of the Socialist Union of Popular Forces, a left-leaning opposition party, received suspended sentences for a 1989 article criticizing conditions in Casablanca courts; the two have appealed. On December 20, 1990, Abdelkrim Ghallab, editor of the *Istiqlal* (Independence) Party daily *al-Alam* (The Flag), was charged with spreading false information about the number of casualties during riots one week earlier. His trial was

²⁸⁷ "Morocco: Update on Human Rights Violations," March 1991.

suspended indefinitely a few days later. *Al-Anoual* (Variety), the weekly organ of the opposition Organization for Democratic and Popular Action, received a letter in April from Minister of Interior and Information Driss Basri, threatening legal action for articles critical of Kuwait, Saudi Arabia and certain other Gulf states on the grounds that the articles threatened Morocco's vital interests.

Publications deemed to threaten "public order" are subject to confiscation or banning by decree of the minister of interior. A new Arabic bi-weekly, *al-Mouatin* (The Citizen), which gave prominent coverage to the issue of the Tazmamart prison, found its first two issues seized and future issues forbidden by a decree on August 1. No explanation was provided. An Islamic-oriented magazine, *as-Sabil* (The Path), was also banned by decree.

Issues of foreign publications often have been banned when they covered human rights issues. In September, authorities seized the issue of the Paris daily *Libération*, which had given page-one coverage of the release of Abraham Serfaty. In July, issues of the French weekly *L'Événement du jeudi* and the satirical weekly *Le Canard enchaîné* were confiscated.

Morocco television viewers continue to be deprived of TV-5, one of the most popular news sources before 1991. Reception of the foreign-based station, which packages French-language broadcasts from France, Belgium and Canada, has been all but impossible since government-controlled facilities stopped retransmitting it to Moroccan viewers in 1990. The apparent motive at the time was the government's fury at the media's interest in Gilles Perrault's savage biography of the king, *Notre ami le roi* (Our Friend the King).²⁸⁸ Although the government started retransmitting TV-5 briefly in late 1990, the broadcasts were again halted during the Gulf war and have not resumed.

Morocco's independent television channel, MI2, continues to be available to viewers by subscription. Although it is owned by a relative of the king and provides only a mild alternative to state television, it is nevertheless one of the very few privately owned television stations in the Middle East and Africa.

The government has launched a number of initiatives that reflect its growing sensitivity to its human rights image. In 1990, the king created the Consultative Council on Human Rights (CCDH) to advise him on

²⁸⁸ Éditions Gallimard, 1990.

human rights, and has endorsed a number of proposals that it submitted to him. However, despite its recommendations for limiting incommunicado and preventive detention as well as other recommendations described below, the CCDH has yet to show that it is a major force for the promotion of human rights in Morocco. There is no evidence that any of its initiatives have pressured the government to take actions beyond what it was already prepared to adopt.

With the ministers of interior and justice and other officials as members, the CCDH operates under close government supervision, despite the participation of two of Morocco's independent human rights organizations, the OMDH and the Moroccan League for the Defense of Human Rights (LMDDH). The CCDH has been in session only a few times since its formation.

In 1991, its credibility was harmed by its silence about the riots of December 14-15, 1990, despite having announced on December 31 that it had formed a commission of inquiry to investigate the events. The OMDH, by contrast, accused security forces of employing disproportionate force, declaring that "the use of firearms cannot be justified on the grounds that certain individuals were wielding clubs or iron bars, or were throwing stones or even setting fires."²⁸⁹

The CCDH, in addition to its above-described proposals for reforming detention laws, submitted to the king proposals for bettering prison conditions and creating a network of "administrative courts." The CCDH also prepared a memorandum on the pardon of prisoners, to which the king alluded in announcing the release of forty political prisoners in August.²⁹⁰ Unlike Morocco's independent human rights organizations, however, the CCDH has never publicly urged the release of all political prisoners being held in Morocco.²⁹¹

²⁸⁹ *"Rapport additif sur la situation des droits de l'homme au Maroc,"* May 8, 1991.

²⁹⁰ *Maghreb Arab Presse* in English, August 15, 1991, as reported in *FBIS*, August 16, 1991.

²⁹¹ The AMDH and the LMDDH have urged a general amnesty for political prisoners since at least 1988. "Maroc: pour une amnistie des détenus politiques," *Le Monde*, December 28, 1988. The OMDH urged their release on repeated occasions, for example, its *"Communiqué du bureau national, à l'occasion du deuxième anniversaire de l'OMDH,"* December 10, 1990.

It was not possible to evaluate the effect of the CCDH's recommendations on Morocco's generally poor prison conditions. According to the Moroccan representatives before the United Nations Human Rights Committee (UNHCR), the CCDH's recommendations had been approved by the king and implemented, and would lead to improved living conditions for prisoners.²⁹²

The CCDH proposal on administrative courts was ostensibly intended to provide citizens with more access to the court system to challenge the actions of local authorities. The proposal has been approved by Parliament but not yet promulgated as law.

The government's human rights offensive was also in evidence in its increasingly serious presentations before the UNHRC, which between November 1990 and October 1991 was engaged in its second periodic review of Morocco's compliance with the International Covenant on Civil and Political Rights. Even at their best, however, Morocco's answers were evasive and disingenuous.

Morocco's response to critical questions about Tazmamart were indicative of its evolving approach. At the opening session, the Moroccan representative claimed that Tazmamart existed only in the allegations of international human rights organizations.²⁹³ The presentation was full of arrogant denials and attacks on Amnesty International and "hostile" media, leading the committee to take the unusual step of continuing its scrutiny of Morocco at its next session, and asking, among other things, for clarifications on secret detention centers. At the final session in October 1991, Moroccan delegate Ali Atmani, president of the Chamber of the Supreme Court, asserted as an official in the Ministry of Justice

²⁹² Human Rights Committee, 43rd Session, Summary record of the 1094th meeting, October 22, 1991, p.3. In November 1990, Morocco's representative had told the committee that the Moroccan Ministry of Justice was working on a new law regulating the conditions in detention that would be completely compatible with all U.N. regulations on minimum conditions for prisoners. (Cited in "Examen du deuxième rapport périodique du Maroc," *Libération* weekly [Rabat], June 21, 1991.) According to the OMDH, the only concrete improvements made so far have been the closing of two of Morocco's worst prisons and the opening of a new facility in Salé. The OMDH told Middle East Watch in December 1991 that Morocco's prisons hold four times their capacity.

²⁹³ "Human Rights Committee Suspends Consideration of Moroccan Report," United Nations Press Release, November 9, 1990, p. 8.

that no secret detention centers existed *under the jurisdiction of that Ministry* (emphasis added), and added that the affair of the army officers [i.e., those at Tazmamart] was on its way to being settled.²⁹⁴

In between these two sessions, Morocco was briefly considered at a session in July 1991, but the delegation from Rabat protested the presence of French television cameras in the chambers and, when the committee ruled that the cameras could stay because its deliberations were public, walked out. The embarrassing episode led the Moroccans to take a more cooperative approach. When the next session convened on October 22 in Geneva, the television cameras were back in the room, but the Moroccans did not walk out.

The members of the UNHRC were clearly well-prepared. They asked tough questions and rebutted the Moroccan presentations on secret detention centers, the Oufkir family, freedom of expression, incommunicado detention, and discrimination against women²⁹⁵ and the tiny Bahai minority.²⁹⁶

²⁹⁴ Human Rights Committee, 43rd Session, Summary Record of the 1094th Meeting, October 22, 1991, pp. 13 and 16.

²⁹⁵ Among the issues discussed at the UNHRC hearings were the all-male composition of Morocco's Parliament (although a handful of women candidates ran unsuccessfully in the last election), and the Family Code which bars a Muslim woman from marrying a non-Muslim man unless he converts, but imposes no such condition on Muslim men in their choice of spouse. (Human Rights Committee, 43rd Session, Summary Record of the 1096th meeting, October 23, 1991, pp. 4-5.) It is also worth noting that a married woman cannot obtain a passport without her husband's permission. (See "Human Rights Committee Suspends Consideration of Morocco Report," UN Press Release, November 8, 1990, p. 4.)

²⁹⁶ The Moroccan representative confirmed to the UNHRC that Morocco's Bahais, estimated by the State Department's *Country Reports on Human Rights Practices in 1990* to number 150 to 200, cannot practice their religion in public. He said that Bahai'ism is a departure from Islam and a by-product of British colonialism in the Middle East. (Human Rights Committee, 43rd Session, Summary Record of the 1096th meeting, October 23, 1991, p.3.) According to the *Country Reports*, Bahais also encounter difficulty when they apply for passports.

The Moroccan representatives stressed recent positive developments, such as the activities of the CCDH, the reform of the detention laws, the release of prisoners, and purported improvements in prison conditions. The representatives claimed that there was no gap in Morocco between law and practice, although mistakes were occasionally made by the police, as in other countries.²⁹⁷ Still, Morocco's overall presentation before the UNHRC was, relative to its earlier approach, an indication of heightened concern for its human rights image.

In a field where most governments tend to dissemble, Morocco's penchant for stone-walling and lying about human rights matters continues to astonish. A few examples will indicate how far Morocco must go if it wishes to adopt a more productive discourse on human rights:

- o For the eighteen years that sixty-one military personnel were secretly imprisoned at Tazmamart, officials never publicly acknowledged the existence of the prison.²⁹⁸ Even as anonymous officials were leaking reports in September to the press about Tazmamart's demolition, Interior Minister Driss Basri claimed, "As far as Tazmamart prison is concerned, I repeat, as His Majesty has said recently, it exists only in the minds and imagination of people who wish Morocco ill."²⁹⁹
- o Just as the authorities never acknowledged the existence of the secret prison at Tazmamart, they never admitted to holding any of the Sahrawis who had disappeared since 1975. Even after it released over three hundred disappeared Sahrawis in 1991, the government continued to insist that it had nothing to do with the problem, telling the UNHRC that the alleged disappearances dated back to a period

²⁹⁷ Human Rights Committee, 43rd Session, Summary Record of the 1094th meeting, October 22, 1991, p.17.

²⁹⁸ For an account of Amnesty International's unsuccessful efforts over ten years to obtain any substantive response to its inquiries on Tazmamart, see its report, *Morocco: A Pattern of Political Imprisonment, 'Disappearances' and Torture*, March 1991, pp. 46-47.

²⁹⁹ Agence France-Presse, September 18, 1991.

when Morocco had had no administration over the Western Sahara.³⁰⁰

- o As for political prisoners, the king said that Morocco had none in a July 21 interview with French television, just as he and his ministers have done both previously and subsequently. Yet, the king saw nothing incongruous about stating in the same interview, "To declare that a part of the territory is not Moroccan is a crime against the state's security, to be judged by a military tribunal." He added that the Moroccan press was free except "the one thing that it is forbidden to do is ridicule the king."³⁰¹
- o Official lies surrounded the case of Abraham Serfaty both while he was in prison and upon his release. In his July 21 interview with French television, King Hassan asserted that Serfaty had been imprisoned for "laying bombs," when in fact Serfaty's conviction of offenses against "state security" did not mention his participation in any acts of violence.
- o No less dubious was the official death toll for the riots in Fez, Tangier and other cities on December 14 and 15, 1990. While various human rights groups and reporters who culled hospital data estimated the deaths at between twenty-eight and over one hundred, the government has not budged from its official total of five dead.

The Right to Monitor

The climate for human rights monitoring has been steadily improving in Morocco, although many obstacles remain. Since 1990, Morocco's three human rights organizations have spoken out with

³⁰⁰ Human Rights Committee, 43rd Session, Summary Record of the 1094th meeting, October 22, 1991, p.17.

³⁰¹ A text of the interview appears in *Maroc soir*, July 22, 1991.

increasing regularity and frankness about abuses.³⁰² They have conducted their own investigations, sent observers to trials, and provided legal defense in political cases. Their work has been covered by the local opposition and foreign press, and has contributed to the growing awareness worldwide of Morocco's human rights record. One remarkable achievement was the October 1990 release by the Moroccan Organization for Human Rights of a nineteen-page "counter-report" to the government's submission to the U.N. Human Rights Committee in Geneva.

A telling sign of the improved climate was the lifting of the taboo against speaking publicly about the fate of the detainees at Tazmamart. In November 1990, after years of not daring to speak out, families of eleven inmates at Tazmamart addressed a letter, later made public, to the Justice Ministry asking for an end to their ordeal. Human rights organizations joined their call, and newspapers covered the mounting demands.

Despite these encouraging signs of growing tolerance for criticism, the Moroccan government continued to impose limits on what could be said and done concerning human rights. Journalists, in particular, had to exercise self-censorship when criticizing human rights abuses, since, as explained above, they risked prosecution for the offenses of "defaming" or "spreading false news" about public institutions.

Human rights organizations and their members faced no prosecutions or physical violence. In general, authorities neither harassed them nor cooperated with them. Officials rarely responded to letters or reports from the OMDH. Both the OMDH and the Moroccan Association for Human Rights (AMDH) reported that their investigations into the riots of December 14-15, 1990 were stymied by local officials of the Interior Ministry and Health Ministries who refused to make available to them any information relating to the events. One result, the OMDH reported, was that it could not definitively establish the number of casualties that had occurred, at a time when, as noted above, the

³⁰² They are the Moroccan Organization for Human Rights, founded in 1988; the Moroccan Association for Human Rights, founded in 1979; and the Moroccan League for the Defense of Human Rights, founded in 1972. The three organizations, together with the Association of Moroccan Jurists and the Moroccan Lawyers Association, signed a National Charter of Human Rights in December 1990.

government was giving an unrealistically low figure.³⁰³

In a rare act of intimidation, the names of four members of the OMDH's national bureau appeared on a list of approximately thirty names that Moroccan authorities in July sent to the offices of opposition parties. The authorities claimed that the individuals named had had relations with persons abroad who were hostile to Morocco's policies. Rejecting the government's "attempts to sow doubt about the nature of the legitimate struggle being waged by the OMDH," the organization affirmed on October 23 that any human rights activities conducted by the four members had been carried out on behalf of the organization. No further steps were taken by the authorities.

The authorities also occasionally have blocked meetings called to address human rights or political issues. In March 1991, the OMDH was effectively denied permission to hold a colloquium on the Gulf crisis and international law. The colloquium was to have taken place in Casablanca, with the participation of the Tunisian and Algerian Leagues for Human Rights. Although no explanation was provided, officials apparently chose to ignore the OMDH's application because of the government's sensitivity to criticism of its military participation in the U.S.-led alliance against Iraq. It was not the first time that the OMDH was prevented from holding a public event because the required permission was withheld.

Foreign human rights monitors continue to encounter obstacles to working in Morocco. Amnesty International has been denied access to Morocco since March 1990, when a research team was asked to leave the country. Repeated requests from Middle East Watch since 1990 to conduct a formal mission to Morocco have gone unanswered.

A delegation of three European doctors who sought to examine inmates recently evacuated from Tazmamart was allowed into the country but was unable to meet with any of the them. The Justice Ministry refused to allow the physicians to visit the two inmates who had been transferred to Kenitra prison, while the inmates who had been given their freedom were too afraid of reprisals to meet the delegation.

Two months before the release of her husband Abraham Serfaty from Kenitra prison, French citizen Christine Daure-Serfaty was told that she could no longer set foot in Morocco. Daure-Serfaty, who often had criticized Morocco's human rights record, particularly the secret prison of

³⁰³ "Rapport additif sur la situation des droits de l'homme au Maroc," May 8, 1991, pp. 2-3. See also *Solidarité*, the newsletter of the AMDH, April 1991, p. 8.

Tazmamart,³⁰⁴ was denounced by King Hassan in an interview with French television on July 21. Denying the existence of Tazmamart, the king said, "Testimony is only as good as the witnesses, and the main witness in this case is a person who has used and abused our hospitality. I have, by the way, informed [Daure-Serfaty] that she will no longer have the right to enter Morocco."³⁰⁵

As for Serfaty himself, his summary expulsion to France upon his release from prison was also a blow to human rights monitoring in Morocco. The engineer and Marxist activist had, during his seventeen years in prison, issued public appeals on Tazmamart, prison conditions and other human rights issues.³⁰⁶ His voice, particularly on the issue for which freedom of expression remains most circumscribed — the Western Sahara — will now only be heard from abroad.

U.S. Policy

In 1991, the Bush Administration played a role in the mounting international pressure on Morocco to improve its human rights record. The U.S. signaled its growing displeasure in its tough and frank assessment of Moroccan abuses in the State Department's *Country Reports on Human Rights Practices in 1990*, released in February 1991, and in a restatement of those concerns in testimony before subcommittees of the House Foreign Affairs Committee in June. Although these were the only prominent public criticisms of Morocco's human rights records, it is widely believed that these statements and more discreet U.S. pressure helped to persuade the king, in the month preceding his September visit to Washington — his first official visit since 1983 — to release Morocco's best-known political prisoner, Abraham Serfaty, together with forty other political prisoners, and to close the notorious secret detention center of

³⁰⁴ See, e.e., Christine Daure-Serfaty, "Les morts-vivants de Tazmamart," *Le Monde*, July 27, 1991.

³⁰⁵ "L'immigration ne doit pas tendre vers l'intégration," déclare le roi Hassan II," *Le Monde*, July 23, 1991.

³⁰⁶ See, e.g., *Le Monde*, December 18, 1990, which carried a description by Serfaty of conditions in which political prisoners are held.

Tazmamart. Events toward the end of 1991, however, raised doubts about whether the Administration intends to maintain pressure on Morocco over the continuing abuses that are less well known but systematic, now that the king has resolved, at least partially, some of the highest-profile and anomalous cases.

The more aggressive stance on the part of the United States had been long awaited by Europe-based advocates of human rights in Morocco. They maintain that the king, who has stubbornly resisted human rights interventions from Europe, would be susceptible to pressure from Washington, which gives Morocco some \$110 to 125 million in aid annually and enjoys excellent relations with the government.

For fiscal year 1992, the Administration has requested \$113 million for Morocco. This includes \$40 million in foreign military financing (a long-term concessional loan), \$1.1 million for the International Military Education and Training program, \$12 million in Economic Support Funds (budgetary support for the government), \$23 million in development assistance, and \$36.7 million in food aid. The Administration justifies aid to Morocco on the grounds of good bilateral relations, the country's strategic location, the Moroccan government's tolerance of multipartyism and advocacy of market economics, and its moderate views on regional issues, notably the Arab-Israeli conflict.³⁰⁷ In 1991, moreover, Morocco sent a small contingent of troops to participate in the U.S.-led coalition against Iraq.

The charter on Morocco in the State Department's *Country Reports* for 1990 accurately depicts both the range and magnitude of human rights abuses, and clearly reflects the work of Moroccan and international human rights organizations. In some respects the report is more critical than the already blunt report for 1989. For example, it devotes a paragraph to the notorious secret prison of Tazmamart, which went unmentioned in the 1989 report. The section on torture is presented in the voice of the State Department, unlike the 1989 report, which tended to attribute the allegations of abuse to others.

³⁰⁷ See the Department of Defense's presentation to Congress on security assistance programs for fiscal year 1991.

Regrettably, the chapter omits the issue of the hundreds of Sahrawis who reportedly are being held secretly in Moroccan detention centers.³⁰⁸ The section on disappearances states dismissively that "there have been few permanent disappearances in recent years, and none was reported in 1990," as if unresolved disappearances are of interest only if they occurred recently.

The chapter's overall candor was admirably reproduced in congressional testimony by the Administration on June 19. Speaking before the House Subcommittees on Africa and on Human Rights and International Organizations, James Bishop, senior deputy assistant secretary of state for human rights and humanitarian affairs, spoke of political reforms that "did not materialize," restrictions on free speech, the "brutal" conditions at Tazmamart, unfair trials of suspected participants in the violent riots of December 14-15, 1990, and "continu[ing] credible reports of torture and mistreatment of persons held under detention, particularly during the period of incommunicado, or *garde à vue*, detention."

There have been few visits by senior Administration officials to Morocco in recent years. On August 3, Secretary of State James Baker had long meetings with King Hassan in Rabat, primarily on the subject of the forthcoming Middle East peace talks. Although Baker and his staff did not use the occasion to comment publicly on human rights concerns, *Le Monde* reported that he had pressed privately on human rights matters,³⁰⁹ at a time when the king's subsequent visit to Washington had already been announced.

In the seven weeks between Baker's visit and the king's arrival in Washington, the king took the above-mentioned dramatic steps on a number of Morocco's most notorious human rights cases. It is probably no coincidence that the only Tazmamart inmate whose release was publicly confirmed before the king's departure for Washington was

³⁰⁸ See, e.g., Amnesty International, "Morocco: 'Disappearances' of People of Western Saharan Origin," November 1990.

³⁰⁹ According to Jacques de Barrin, "La mort d'un bagné fantôme," *Le Monde*, September 22-23, 1991, Secretary Baker reportedly stressed to officials the importance that the United States attached to the speedy resolution of the Tazmamart problem. A State Department official refused to confirm this account to Middle East Watch.

Lieutenant M'barek Touil, whose wife is a U.S. citizen.

However, all of these steps were doubled-edged. Political prisoner Abraham Serfaty was released, but immediately expelled from his country on the false pretext that he was Brazilian. The secret detention center of Tazmamart was closed and several of the inmates were released, but no accounting has been provided of the thirty military men believed to have died there. Some forty political prisoners were pardoned on August 16, but a far larger number of prisoners detained for peaceful expression of their opinions remain behind bars in Morocco.

In light of these qualifications, and the above-described very limited accomplishments to date of the Consultative Council on Human Rights, President Bush sent the wrong signal when in his welcoming speech in Washington on September 26 he saluted without qualification the king's human rights accomplishments:

Morocco is also responding to the call to all governments to recognize the rights of their people. In this regard the United States applauds Your Majesty's recent release of political prisoners, your establishment of the Royal Consultative Council on Human Rights in Morocco, and I know Morocco will not be deterred from this courageous course.

Such unqualified praise gave the impression that the United States would be satisfied with the partial resolution of some of the high-profile human rights cases, and willing to ignore Morocco's more mundane, systematic abuses.

At no occasion during the king's visit did the Administration dispel that impression. Nor was it dispelled during congressional hearings two weeks after the king's visit, when Ambassador Bishop, who had testified so forcefully on Moroccan abuses in June, gave an indifferent presentation at a hearing on the Western Sahara before the same two subcommittees. The State Department's written testimony ignored the issue of the Western Saharan disappeared, and in his oral remarks, Bishop commented only that:

We understand that some 250 to 300 Western Saharans were freed from Moroccan prisons [in June 1991]. The Moroccans said that that was the total number who were confined. We do not know whether indeed that was the case. We're attempting to refine our information.

Asked what the State Department was doing about the problem, Bishop replied, "We have expressed our concern and we have asked the Moroccan government for further information."

Ambassador Bishop should have voiced greater skepticism about Morocco's claim that it had freed all the Western Saharans it was holding, particularly since, neither before nor after releasing groups of them in 1991, has Morocco publicly acknowledged or provided information about the Sahrawis in its custody. Like many detained Moroccans, the released Sahrawis had been held in secret detention centers under harsh conditions, some since 1975. Amnesty International charges that Morocco may still be holding some of the several hundred Sahrawis who remain unaccounted for.

The Bush Administration may have eased human rights pressure on Morocco in the fall because of the delicate international initiatives getting under way to resolve the Western Saharan and Arab-Israeli conflicts. Morocco is, of course, central to the former and a potential U.S. ally in the latter. But to soft-pedal human rights at this time would jeopardize the prospects for continuing recent improvements in human rights in Morocco and, in the case of the Western Sahara, threaten to undermine the foundation on which a durable peace can be built.

U.S. pressure in 1991 was particularly timely because it complemented growing pressure from Europe to improve Morocco's human rights record. In 1990, the king's poor record on this score was front-page news in France when Gilles Perrault's unflattering profile of the king, *Notre ami le roi* became a bestseller. Sales of the book were helped by the clumsy and unsuccessful efforts by Moroccan officials to prevent it from being distributed or even covered by the French media.

The European Parliament has condemned human rights conditions in Morocco on several occasions, including a November 21 resolution calling for the release of all political prisoners and protesting the refusal of authorities to permit a team of European doctors to visit the two former inmates of Tazmamart who had been transferred to Kenitra prison.

The parliament's activism on human rights in Morocco prompted the dispatch of a delegation from the king's Consultative Council on Human Rights to attend parliamentary deliberations on this subject in November 1990. Concerned about its economic ties with Europe, Morocco can ill afford to ignore what happens at the Parliament in Strasbourg.

Morocco has been in the spotlight partly because of the stepped-up efforts, particularly by the United Nations, to end the sixteen-year conflict

in the Western Sahara and to organize a referendum in 1992. Morocco's human rights record has also received greater attention due to the rapid evolution of its neighbor, Algeria, from a relatively repressive state to one far more tolerant than Morocco of political expression and activism. The last two years have revealed limits to King Hassan's stubbornness in the face of international action on human rights. Meaningful improvements have taken place under simultaneous pressure from the United States and Europe. However, for the much-needed institutionalization of reform in Morocco, such pressure must be maintained.

The Work of Middle East Watch

In June, Middle East Watch testified on human rights in Morocco before the House Subcommittees on Africa and on Human Rights and International Organizations. Shortly before King Hassan's visit to Washington in September, Middle East Watch issued a newsletter criticizing Morocco's denial of passports to former political prisoners.

France's expulsion of the Moroccan dissident Abdelmoumen Diouri in July prompted a letter of protest to French authorities from Middle East Watch and a short newsletter. The French Interior Ministry had been pressuring Diouri to limit his political activity in France and to refrain from publishing in France, *A Qui Appartient le Maroc? (Who Owns Morocco?)*, his manuscript on King Hassan's vast wealth and financial dealings. Diouri's expulsion order, which many believed was issued to please King Hassan, was later rescinded, and Diouri was permitted to return to France. Both French and Moroccan authorities denied that the two countries' bilateral relations were a factor in the expulsion.

Middle East Watch met in the course of the year with several prominent members of the Moroccan Organization for Human Rights. In December 1990, Middle East Watch brought the president of the Moroccan Association for Human Rights, Mohamed el-Hihi, to New York and Washington as part of a week-long program to honor human rights monitors from around the world.

SAUDI ARABIA

Human Rights Developments

Saudi Arabia is a party to only three international human rights instruments: the Genocide Convention, the Slavery Convention and the Supplementary Convention on the Abolition of Slavery. Indeed, the kingdom was one of only a handful of countries — South Africa and former Soviet Bloc countries were the others — that did not vote for the Universal Declaration of Human Rights when it was adopted by the United Nations General Assembly on December 10, 1948. Saudi Arabia's stated reservations to the Universal Declaration were that its call for freedom of religion violated the precepts of Islam, and that the human rights guaranteed by the Islamic-based law of Saudi Arabia surpassed those secured by the Universal Declaration.³¹⁰ These two arguments were later repeated to explain Saudi refusal to sign most other human rights documents, including the International Covenant on Civil and Political Rights.³¹¹ The only other pertinent international treaties that Saudi Arabia has adhered to are the four Geneva Conventions of 1949 and thirteen (of more than 170) conventions of the International Labor Organization.

Saudi Arabia does not have a written constitution or an elected legislative body. There are no elections of any kind. All political parties are banned, as are most forms of association. All critical political expression is forbidden. The press is strictly regulated, and assembly is severely restricted.

In theory, the legal system is based on *Shari'a* (Islamic law). However, secular legislation is frequently proposed by the Council of Ministers. It becomes law after it is ratified by royal decree (*marsoom*). The king can directly issue a royal order (*amr*) which in practice has the same weight as a decree. Senior ministers also have broad authority to

³¹⁰ Ministry of Information, *Proceedings of Conference of Saudi Scholars and European Lawyers on Islamic Law and Human Rights*, Riyadh: Ministry of Information Press, 1972, p. 15 (in Arabic).

³¹¹ Ministry of Foreign Affairs, Diplomatic Studies Institute, *Human Rights: Western Claims and Islamic Authenticity*, Riyadh, 1986.

enact legislation. Secular courts specialize in commercial and labor disputes and interpret government-issued secular laws. But most courts are based on the strict Hanbali school of *Shari'a* law. There are no codified laws; the courts rely mostly on commentaries written in the Middle Ages, especially by the thirteen-century jurist, Ibn Taimiyya.

Frequently, the government bypasses the court system altogether, disposing of suspects either by administrative action or by forming closed-door summary tribunals to try them. In 1980, for example, then-King Khaled ordered the execution, without any judicial proceeding, of sixty-three suspects captured by government troops after bloody clashes with a radical Islamic group in which more than two hundred government forces were killed. While executions without trial are exceptional, lesser administrative sentences are common, including lengthy prison terms and flogging.

A royal pardon issued in June, resulting in the freeing of most prisoners held for politically motivated offenses without due process was the only notable improvement in human rights in Saudi Arabia in 1991. However, despite King Fahd's declarations since late 1990 that he would soon approve a draft constitution and appoint a consultative assembly, neither promise has been fulfilled. The hopes for positive change that were encouraged by international exposure during the Persian Gulf crisis were quickly dashed as soon as the war was over and access by the international press was once again restricted.

Saudi arrest and detention procedures are governed by Imprisonment and Detention Law No. 31 of 1978, which places few restrictions on the grounds or duration of pretrial detention of suspects. However, Article 4 waives *all* restrictions for "crimes involving national security," giving the Minister of Interior untrammelled discretion over these cases.

A judicial procedures act — the first of its kind in Saudi Arabia — was passed by the Council of Ministers and ratified by King Fahd in June 1990. This welcome law established guidelines for protective custody and pretrial detention and also clarified the sometimes problematic jurisdictional division between the *Shari'a* and secular courts. Two months later, however, King Fahd repealed the law, asserting that there was "need of further study," and once again leaving detainees with virtually no protection against arbitrary arrest and detention, especially at the hands of the secret and religious police.

During the first two months of 1991, the Saudi government continued its roundup of scores of opponents of the Gulf war, most of

whom were members of various religious groups. Nearly all were released after the war and were never charged with any crime. In accordance with standard Saudi practice, most of these detainees were held in prolonged incommunicado detention without access to family or legal counsel. Only after the initial interrogation were some allowed legal counsel and, in the case of foreign detainees, visits by embassy representatives.

Hundreds of foreign residents, mostly Arab nationals, were arrested after an armed attack on a bus carrying U.S. military personnel in Jiddah on February 3, 1991. Most were released after the authorities were satisfied that the main suspects had been apprehended. While in custody, nearly all were held incommunicado.

The royal pardon referred to above resulted in the release of most detainees held without due process for nonviolent political offenses. Granting amnesty is customary around Eid al-Adha, the Muslim feast of sacrifice, but in 1991 it included more prisoners than in previous years, perhaps in celebration of the Desert Storm victory and as an attempt to mend fences with the opposition. Those pardoned included prisoners suspected of membership in the secular Arab Socialist Action Party and two Shi'a organizations, Hizbollah of Hijaz and the Islamic Revolution Organization. However, the amnesty did not mean immediate rehabilitation of all prisoners. Security prisoners were given a five-year probationary period when they cannot travel abroad or hold government jobs.

A number of long-term security prisoners did not benefit from the sweeping amnesty. They include twenty people arrested in 1988 on suspicion of bombing oil installations in the eastern oil town of Abqaiq. Denied legal representation during their trial, the twenty-six suspects were subjected to severe torture, according to credible reports from family members. Four of the suspects were executed under the terms of Regulation No. 148 of 1989, an ex-post-facto regulation issued after their arrest, in clear violation of the principles codified in Articles 6(2) and 15 of the International Covenant on Civil and Political Rights.³¹² Two

³¹² Despite the Saudi government's contention that this regulation was not a new law but merely an interpretation of existing *Shari'a* prohibition against terrorism, many in Saudi Arabia believed that it was a departure from long-standing practice. The regulation allowed judges to impose the death penalty on those who commit acts of sabotage against "essential utilities such as oil pipelines

others were released. The remaining twenty are still detained under the authority of the same regulation. The regulation was issued after the government secured a religious opinion (*fatwa*) from the Council of Senior Scholars, the highest religious authority in Saudi Arabia, which redefined armed insurrection to include acts of terrorism and sabotage.

Others in detention without trial who did not benefit from the June 1991 royal pardon include five Shi'a students accused of setting a fire in their dormitory at King Saud University in Riyadh in July 1989.

Apart from security-related offenses, Saudi Arabia continues to hold scores of Saudi and foreign prisoners in defiance of international law, some of them for over a decade. Most of those held in these cases were not tried for criminal offenses, and some were never tried at all. They are imprisoned solely because of bankruptcy or failure to fulfill other contractual obligations, in clear violation of principles set forth in the International Covenant on Civil and Political Rights.³¹³

In August 1991, Neville Norton, a British businessman, was released after five years in detention without trial because of a business dispute with members of the royal family. In the ten years preceding his detention, Norton's passport was confiscated, effectively preventing him from leaving the country. This was the latest in a string of similar cases involving foreign businessmen who had fallen afoul of their Saudi partners or members of the royal family. Some reported that they had been tortured during detention. Most foreign governments refrain from intervening for fear of jeopardizing economic ties with Saudi Arabia.

Both the use of force to elicit confessions and harsh conditions of detention aimed at punishing prisoners are common in the Saudi security

and oil installations whose functioning is essential for the safety of citizens or the security of the nation." The regulation did not require that the sabotage result in loss of life for the death penalty to be imposed. While the Qur'anic phrase on which the regulation relies is admittedly ambiguous, it had been long-standing practice that the range of punishments for armed insurrection (*heraba*) spelled out in the Qur'an (ranging in severity from exile to execution) be calibrated to the severity of the harm caused, with the maximum penalty reserved for acts of insurrection that result in loss of life. (Middle East Watch interviews, August 1990; Muhammed Mufti and Sami al-Wakil, *Islamic Political Theory of Human Rights*, Qatar: Al-Umma Publications, 1990, p. 43, in Arabic.)

³¹³ Article 11 of the Covenant provides, "No one shall be imprisoned merely on the ground of inability to fulfil a contractual obligation."

system. While the Imprisonment and Detention Law 31 of 1978, for example, prohibits "any assault whatsoever on prisoners and detainees" (Article 28), the same law explicitly sanctions methods of discipline that violate international standards, such as flogging, indefinite solitary confinement and deprivation of family visits and correspondence (Article 20).

Even the limited protection offered by the Imprisonment and Detention Law does not extend to "crimes involving national security." Article 4 gives the Minister of Interior — already granted broad discretion to arrest and detain — virtually unlimited authority over state security suspects, with no judicial review of any kind. Nor, in practice, does this law apply to detention by the religious police.

Despite royal orders instructing detention authorities not to torture prisoners — usually issued after the death of a detainee — there were numerous reports in 1991 of torture in Saudi detention facilities, especially those of the secret and religious police. The secret police, known as the General Investigation Directorate (*al-Mabaheth al-'Amma*) has close to 150 detention facilities and unidentified "safe houses." The religious police, known as the Association for the Propagation of Virtue and the Deterrence of Vice (*Hai'at al-Amr bil-Ma'ruf wa al-Nahi 'an al-Munkar*), popularly termed "the Zealots" (*al-Mutawwa'a* or *Mutawwa'in*), maintains more than two hundred stations throughout the kingdom.

Unpunished use of torture by members of the royal family was also reported in 1991. In July, the New York City police rescued Turki al-Yaqouti, a thirty-six-year-old Saudi member of the staff of Prince Khaled ibn Talal — a nephew of King Fahd — who was visiting New York at the time. According to a police account, al-Yaqouti "had clearly been tortured," with burns on his chest and both forearms and wrists. "It looked like somebody did a job on him," said one police official. The victim was taken to the New York Hospital Burn Center, but since he decided not to press charges, and since the police thought that the torture had probably taken place in Saudi Arabia, no charges were filed.

Three incidents of harassment of foreign workers in Riyadh were also reported to Middle East Watch. In all three cases, roving bands of junior princes and their bodyguards were responsible. Victims who reported the incidents to the police complained of official inaction.

While there were no reports of extrajudicial killings in Saudi Arabia in 1991, judicially ordered executions resumed in May after an eight-month moratorium following the Iraqi invasion of Kuwait. Although no official reason was given, the timing of the suspension suggested that it

was designed to avoid the scrutiny of hundreds of foreign reporters and television cameras allowed into the country throughout the Gulf crisis. In May and June alone, twenty-two were executed, suggesting that a backlog of death sentences had built up in previous months. Those condemned to death had been convicted of murder or drug trafficking.

All judicial executions carried out in 1991 violated internationally recognized due process guarantees. The only procedural rights allowed under Saudi regulations are the right to legal counsel before trial — if a suspect asks and can pay for it — and the right to confront one's accusers and contest one's pretrial confessions. However, defendants are not allowed legal representation in the courtroom, in clear violation of the principle set forth in Article 14(3)(d) of the International Covenant on Civil and Political Rights.³¹⁴ Most of those condemned to death in 1991 were first held in prolonged incommunicado detention for interrogation before family visits and meetings with legal counsel were allowed, and some never received legal counsel, either because they did not ask for it or because they could not afford it. A number of the drug-trafficking death sentences were grossly disproportionate to the alleged crimes, which did not involve loss of life.

Corporal punishment continued in 1991 for political offenses as well as common crimes. For example, in June, Zuhair al-Safwani, a twenty-seven-year-old student, was sentenced to four years in jail and three hundred lashes for allegedly maintaining contacts with opposition groups outside the country. On December 6, two men (one Saudi and one Yemani) accused of stealing a safe had their right hands amputated in Jiddah, Saudi Arabia, thus resuming another pre-crisis practice of amputating the hands of convicted thieves.³¹⁵

During the Gulf crisis, Saudi authorities banned all public criticism of the government's policies. A number of prominent clergymen and theologians were prevented from speaking out, including Shaikh Safar al-Hawali and Shaikh Salman Fahad al-Awdah. Shaikh al-Awdah was arrested several times in 1991 and then restricted to the Qasim region,

³¹⁴ However, defendants in nonpolitical cases are allowed legal counsel outside the courtroom, and a defendant who does not speak Arabic is allowed to have a translator in the courtroom who in practice can be a lawyer.

³¹⁵ *Le Monde*, December 10, 1991, quoting the Saudi daily *Arab News* of Jiddah.

three hundred kilometers north of Riyadh, in an effort to enforce the ban. While the restriction of his residence has not been rescinded, it was not strictly enforced after the end of the war. Dr. Muhammed al-Mas'ari, a professor at King Saud University who was sympathetic to the fundamentalist religious movement, was also prohibited from speaking publicly and for several months suspended from teaching.

Since October 2, Muhammed Shams al-Din Abdalla al-Fassi, a Saudi who is related by marriage to the royal family, has been held incommunicado after being arrested in Jordan and turned over to Saudi authorities.³¹⁶ His family, which fears for his life, reports that he has been tortured and denied family visits and legal counsel. Al-Fassi incurred the displeasure of the Saudi government for, among other things, broadcasting on Radio Baghdad his critical views of the Saudi government during the Gulf crisis.

In an unprecedented move, Saudi Arabia granted visas to more than one thousand foreign reporters during the Gulf crisis. But the Saudi government and the Pentagon issued strict orders regulating the transmission of press reports. In addition to military censorship, reporters were instructed not to cover Saudi domestic issues.

Both Saudi and foreign reporters were arrested for unauthorized news coverage. Saleh al-Azzaz, editor-in-chief of the monthly *Tejarat al-Riyadh* (*Riyadh Commerce*) and regional editor of the weekly *al-Majalla* (*The Magazine*), was arrested on November 6, 1990 and held until March 4, 1991 — shortly after the end the war. He was accused of attempting to pass to Western news organizations reports of the November 6 demonstration by Saudi women demanding the right to drive. There were numerous incidents in which reporters were beaten by Saudi forces or had their copy confiscated or film destroyed when they veered from the

³¹⁶ Muhammed al-Fassi's sister is married to Prince Turki ibn Abdel Aziz, King Fahd's brother and a former deputy minister of defense. Shams al-Din al-Fassi, Muhammed's father, had been detained in Saudi Arabia for several years without charge, reportedly for holding unpopular religious views. In October 1983, a plot to kill Shams al-Din al-Fassi was uncovered in London. In October 1984, Walter Martindale, a former U.S. State Department official, was convicted in U.S. federal court on several gun-possession charges in connection with the plot, and was sentenced to ten years in prison. Martindale maintained during the trial that the plot had been masterminded by Prince Nayef ibn Abdel Aziz, the Saudi minister of interior and another brother of King Fahd.

approved itinerary. Shortly after the war ended, Saudi Arabia returned to its precrisis practice of denying most visa requests from foreign reporters.

On March 22, Saudi National Guardsmen forcibly dispersed a two-thousand-strong peaceful demonstration that took place in al-Qatif, a predominantly Shi'a town, in support of Grand Ayatollah Abu al-Qasem al-Khoei. Imam al-Khoei — one of the highest-ranking Shi'a clergymen in the world and highly revered by the Saudi Shi'a population — had just been detained by the Iraqi government. The demonstration was thus against Saddam Hussein and could have been construed as supportive of Saudi government policy. This purpose notwithstanding, the official Saudi government ban on all demonstrations, especially those organized by the Shi'a community, meant that many of the participants in the demonstration were beaten and arrested. A similar, but smaller, demonstration organized in the eastern city of al-Dammam on March 29 met with a like response from security forces.

On May 28, in preparation for the annual Muslim pilgrimage *al-Hajj*, Saudi Minister of Interior Prince Nayef ibn Abdel Aziz issued a ban on using, displaying or bringing into the country "books, photographs, and leaflets of political, propagandistic or ideological aim." Aimed primarily at the Iranian pilgrims, permitted to return to the country for the first time since 1987 when a major disturbance left over four hundred dead, the ban was strictly enforced against all political literature and Shi'a religious documents.

On November 14, Abdel-Rahman al-Hassani, a Moroccan journalist and editor-in-chief of the weekly *Hadihi al-Dunia* (*This World*), was expelled from Saudi Arabia without being informed of the reasons.³¹⁷ He attributes the expulsion to a combination of suspicion that he was distributing publications deemed politically objectionable to Saudi authorities and requests by the Moroccan government to expel him because of a critical column he had written in 1986 about Moroccan judges. The article had prompted the Moroccan Ministry of Interior to file formal criminal charges. According to an order issued in 1989 and apparently still in force, he is accused of "affront to the supreme dignity of Moroccan justice" and his name "is at all times and from now on

³¹⁷ The newspaper was started in Morocco in 1966. In 1986, it moved its offices to Greece. During 1990-91, its editors were in Saudi Arabia and Greece but it was printed in Athens and distributed from there.

officially listed at all Moroccan borders."

Long-standing discrimination against Saudi Arabia's Shi'a Muslim minority, which intensified after the 1979 Iranian revolution and the subsequent Iran-Iraq war (1980-1988), eased during 1991. Shi'a are the largest minority in the country; estimates range from two to seven percent of a total population of fifteen million, although there has been no official census.³¹⁸ Shi'a are concentrated in the oil-producing Eastern Province, where their share of the relatively small native population is more significant.³¹⁹

There were several reasons for the easing of repression. Shaikh Ali Hassan al-Saffar, a leading Saudi Shi'a cleric, supported the Saudi war effort against Iraq in speeches broadcast from his place of exile in Syria. Improved Saudi-Iranian relations and the Saudi government's need to close ranks at home also played a role.

As a result, close surveillance of Shi'a towns, raids by security forces, intimidation and public humiliation, all of which had been common, were stopped during 1991. Saudi Aramco, the government-owned oil company and the largest employer of Shi'a in the country, reopened its recruitment offices in Shi'a towns after years of inactivity. However, the number of new recruits was small despite the vast expansion of oil production and the flight of many foreign oil workers. Moreover, the policy started in the mid-1980s of displacing senior Shi'a executives at Aramco continued, according to Aramco employees interviewed by Middle East Watch.

Two petitions submitted to King Fahd by Shi'a clergymen in 1991 complained about a ban on the use of religious tracts required for the exercise of Shi'a religious rites. The clergymen also protested restrictions imposed on Shi'a university admissions, the ban on military service by Shi'as, and the difficulty faced by the community in trying to secure jobs

³¹⁸ Unofficial estimates suggest that the native population of Saudi Arabia is close to two-thirds of the total population. Three to eleven percent of the native population is Shi'a.

³¹⁹ There are also smaller Shi'a communities in 'Asir Province near the Yemeni border and in Medina, the second holy city.

with government agencies or government-owned companies.³²⁰

On September 30, Shaikh Abdalla ibn Jibreen, a member of the government-appointed Council of Senior Scholars, issued a *fatwa* that Shi'as are "idolators deserving to be killed." The *fatwa*, for which he has not been censured publicly, reflects the view of the Sunni religious establishment, although not necessarily the government as a whole.

Non-Muslim residents in Saudi Arabia also face official discrimination. They are not allowed to practice their religion in public, display religious symbols, or import religious books. During the Gulf war, this matter was one of the thorniest restrictions on U.S. and allied troops, although special exemptions were allowed to accommodate the foreign armies camped on Saudi soil for up to nine months.

There was no improvement in 1991 in the official Saudi policy of discrimination against women in employment, education and travel. By law, women are not allowed to travel within the country or abroad without being accompanied by a male relative. Women are also banned by law from employment in most public and private enterprises, except in those few circumstances in which the employer is able to provide a completely gender-segregated work environment. Technical and vocational training is off-limits to women except in health trades. Access to university education is controlled by strict quotas in almost all fields, with most professional schools completely barred to women.

Before November 1990, women had been banned in practice, but not by law, from driving in Saudi Arabia. However, when forty-seven mainly professional women challenged this custom on November 6, 1990 by driving their own cars in Riyadh (having secured driver licenses in other countries), the move backfired badly. All the women were arrested. Released the same day into the custody of their male relatives, the women had their passports confiscated and were suspended from any public job they had held, including a number of university professorships. Faced with uproar at the protest from the religious establishment and other fundamentalists, Prince Nayef, the minister of interior, later issued an order formally banning driving by women, thus making a hitherto implicit ban explicit in law.

³²⁰ The complaint about job discrimination mentioned Aramco (the oil company), Petromin (the oil-distribution network), SABIC (Saudi Arabian Basic Industries Company, the petrochemical conglomerate) and the Eastern Province Power Company.

In November 1991, passports were returned to the women and, according to reports received by Middle East Watch from those personally familiar with the case, the women were quietly given back pay and promised that they would be able to return to their former positions. It remains to be seen whether this promise is actually carried out. Moreover, the government has made clear that it will continue to punish those who try to challenge the officially sanctioned policy of gender-based discrimination.

An officially sanctioned campaign against Yemeni residents of Saudi Arabia, begun the previous year, persisted in 1991. The campaign was waged in retaliation for the Yemeni government's tilt toward Iraq during the Gulf crisis and in response to Yemeni press criticism of Saudi policy in the crisis. On September 22, 1990, the Saudi government abruptly ended the preferential treatment previously extended to Yemeni guest workers, including permission to work without a sponsor (*kafil*) and to operate businesses without a Saudi partner. The workers were given one month — later extended by another month — to find a sponsor, and businessmen were given three months to find Saudi partners. Close to one million out of the 1.5 million Yemenis in Saudi Arabia — many of them having lived most of their lives in the kingdom — were not able to adjust their status in accordance with the new procedures in the short time allowed and were ordered out of the country. Departing Yemenis were also forced to leave behind much of their property.³²¹

Under the new procedures, thousands of Yemeni workers were detained in 1991 and most were deported without the opportunity for judicial review. Residents of Riyadh reported to Middle East Watch that Yemenis are still being arrested on sight, even if they hold valid permits. Those able to prove their compliance with the new requirements are usually released, but many of them are subjected to ill-treatment while being interrogated.

On November 8, 1990, in a surprise move clearly dictated by the unprecedented international scrutiny to which Saudi Arabia was being subjected at the time, King Fahd announced that he had approved the formation of a long-awaited consultative assembly. He promised that the assembly would be established "as soon as the final touches are made on

³²¹ Saudi border guards required proof of purchase for items taken out of the country. To make sure that the goods were for personal use and not resale, the quantities allowed across the border were limited.

a final draft of a basic law for the kingdom," which had been submitted to him by a special committee headed by Prince Nayef, the minister of interior and the king's brother. The announcement was the king's second in ten years that a consultative assembly and a basic law — the rough equivalent of a constitution — were about to come into existence.³²²

Buoyed by King Fahd's announcement and by the international attention resulting from the presence of half a million U.S. troops in Saudi Arabia, forty-three leading Saudi figures from all walks of life and political leanings sent an open letter to the king suggesting the introduction of democratic reforms and the observance of basic liberties. The letter, which began circulating in the country clandestinely during the first half of December 1990, called on the king to expedite the appointment of a consultative assembly and the promulgation of a constitution. It also suggested reforming the judicial system and granting freedom of the press. Although security forces questioned a number of signatories to identify the petition's instigators, the government largely ignored the issue.

When, two months later, some two hundred religious scholars, including the senior hierarchy of the religious establishment, circulated a similar petition, the government took note. The king summoned a number of key signatories of the petition and criticized them for circulating it. After the meeting, some of the most prominent petitioners — including Shaikh Abdel Aziz ibn Baz, the highest religious authority in the country and probably the most significant name on the petition — publicly criticized the leaking of the document to the press and expressed their complete trust in the government.

In an important speech on November 7, 1991, King Fahd again said that the formation of an advisory council and the adoption of a basic law were imminent — "within a period of no more than a month or a month and a half." This was the most specific the Saudi government has been in setting a firm timetable, but given the government's thirty-year record of evasion and procrastination on this sensitive matter, most observers are skeptical about the prospects of democratic reform in Saudi Arabia in the near future.

Illustrating its true sentiments, the Saudi government is widely acknowledged to have been the main source of pressure on the Kuwaiti

³²² In 1980, King Fahd, then crown prince, made a similar announcement, saying that a draft constitution had been completed.

royal family to delay the reconvening of Kuwait's National Assembly, which was dissolved in 1986 in part at Saudi instigation. Pro-democracy activists in Bahrain and the United Arab Emirates believe that Saudi pressure also lies behind their governments' opposition to democratic reform.

The Right to Monitor

There was no change in 1991 in Saudi policy banning the formation of local groups to monitor human rights. Membership by Saudi citizens in foreign-based human rights organizations is not allowed without authorization from the Ministry of Interior, which is rarely given.

During the Gulf crisis, Saudi Arabia allowed international human rights organizations relatively free access to interview refugees from Kuwait. Access to Iraqi refugees has been more restricted but not banned in principle.

The International Committee of the Red Cross (ICRC) was not allowed to visit Iraqi soldiers who surrendered between August 1990 and January 17, 1991. After the start of the war, the ICRC was given full access to prisoners-of-war.

U.S. Policy

A special relationship of over fifty years between the United States and Saudi Arabia was cemented by the war effort to oust Saddam Hussein from Kuwait. President Bush's original justification for dispatching U.S. troops to Saudi Arabia, in August 1990, was the alleged threat of an Iraqi invasion of the kingdom. Post-war cooperation has involved extensive contacts between the two countries on future security arrangements in the Gulf, Saudi defense plans, the fate of the Iraqi regime led by Saddam Hussein, and the Arab-Israeli peace process.

Pledges to work toward a curb on all arms sales to the Middle East notwithstanding, the U.S. drive to arm Saudi Arabia with U.S.-made weapons accelerated in 1991 and is projected to continue over the next several years. On November 8, Pentagon officials announced the Administration's plans to provide Saudi Arabia with a large package of advanced weapons. The \$3.3 billion sale, if approved by Congress, would include seven hundred ground-to-air missiles for fourteen defensive

Patriot missile batteries, to be added to six batteries sold in the fall of 1990. In addition, Saudi Arabia has ordered seventy-two F-15 fighter planes from McDonnell Douglas, at a cost of \$4 billion, according to an announcement by the company in November 1991. The two deals are part of a \$14 billion arms package that Saudi Arabia is seeking to purchase from the United States for delivery in 1992 and 1993.

The U.S. government is also negotiating long-term arrangements with Saudi Arabia for the use of Saudi military facilities and the right to preposition a substantial cache of U.S.-owned weapons in the kingdom. The U.S. arming of Saudi Arabia, and the tremendous good will which the Saudi government has for the Bush Administration following the liberation of Kuwait, provide the Administration with a special opportunity to encourage Saudi respect for human rights.

Despite this opportunity, respect for human rights in Saudi Arabia has never been a priority for the Bush Administration or its predecessors. The State Department's *Country Reports for Human Rights Practices in 1990*, released in February 1991, catalogued in some detail human rights abuses in Saudi Arabia. But the Administration has chosen not to follow its own findings with public statements indicating displeasure with those abuses.

With respect to political participation, there was only one reference in 1991 indicating a degree of U.S. concern about the absence of democracy in Saudi Arabia. On November 20, in a lengthy statement read by Edward Djerejian, the newly appointed assistant secretary of state for Near Eastern and South Asian affairs, before the House Subcommittee on Europe and the Middle East — his first appearance before the subcommittee since his appointment — he avoided mentioning human rights as a component of U.S. policy toward the region. Questioned later on the subject of political participation, Secretary Djerejian said that the United States was "pressing all countries in the region, including Kuwait and Saudi Arabia, to make democratic reforms."³²³

During the entire seven-month crisis in the Gulf, the United States treated the Saudi government with kid gloves. Saudi Arabia had refused to treat as prisoners of war Iraqi soldiers who surrendered before the start of the war on January 16, 1991. Classifying them as "military

³²³ The text of the prepared ten-page statement was provided to Middle East Watch by the State Department but the transcript of the hearing was not available as this report went to press. The quoted answer was provided to Middle East Watch by a reporter who had attended the hearing.

refugees" who did not fall under the protection of the Third Geneva Convention of 1949, the Saudi government did not allow prisoners to contact their families and prevented visits by the International Committee of the Red Cross. U.S. officials told Middle East Watch at the time that they considered these soldiers to be prisoners of war entitled to protection under the Third Geneva Convention. They also told Middle East Watch that the two governments had signed an agreement — the provisions of which were classified — to spell out the treatment of prisoners of war in accordance with the Geneva Convention. Despite this disagreement, and the joint responsibility of the two governments to ensure compliance with the Third Geneva Convention, the United States refrained from publicly commenting on the issue.

The Work of Middle East Watch

During the Gulf crisis, Middle East Watch dispatched two missions to Saudi Arabia to interview Kuwaitis and others seeking refuge in Saudi Arabia during the Iraqi occupation of Kuwait. Later, in May 1991, a Middle East Watch delegation visiting Kuwait at the time went to Rafha, in northern Saudi Arabia, to visit the main Saudi camp for Iraqi refugees there. A separate request, submitted to the Saudi Embassy in Washington for permission to send a human rights mission through Saudi Arabia on the way to the then U.S.-controlled zone of southern Iraq, met with no response.

Throughout the crisis, Middle East Watch followed the treatment by Saudi Arabia of Iraqi prisoners of war. On March 7, it issued a newsletter, "POWs, Wounded and Killed Soldiers," criticizing the conduct of the principal parties to the Gulf war — Iraq, Saudi Arabia and the United States — in their treatment of prisoners of war.

In June, in testimony before the House Subcommittees on Europe and the Middle East and on Human Rights and International Organizations, Middle East Watch criticized Saudi Arabia's pressure on the Kuwaiti government to postpone parliamentary elections. In August, Middle East Watch communicated to the Saudi government its concern over reports that Iraqi refugees in Saudi Arabia were denied access to the outside world. We also called on Saudi Arabia to facilitate refugee relocation to other countries. In September, Saudi Arabia formally asked the United Nations High Commissioner for Refugees to help in the resettlement of Iraqi refugees who did not wish to be repatriated.

In our report on human rights violations in Kuwait, issued on September 11, Middle East Watch criticized the Saudi government's refusal to allow Palestinians wishing to leave Kuwait by land to pass through Saudi territory on their way to Jordan. The effect of this policy, for those who did not want to risk the dangerous passage through Iraq, was to limit the possessions that they could take with them to items that could be carried as personal luggage on an airplane. The policy, which Saudi Arabia instituted upon the liberation of Kuwait on February 26, was amended by the end of October, according to reports received by Middle East Watch from Kuwaiti officials. However, as of mid-November, Middle East Watch was still receiving reports that Palestinians leaving Kuwait were not allowed to pass by land through Saudi territory.

On November 1, Middle East Watch wrote to the Saudi government expressing its concern over the incommunicado detention and reported mistreatment of Muhammed al-Fassi, who had been arrested in Jordan and turned over to Saudi Arabia in early October. No reply was received to this or previous such protests.

On November 17, in its report entitled *Needless Deaths in the Gulf War*, Middle East Watch documented Iraqi missile attacks on Saudi Arabia. The report condemned as indiscriminate the Iraqi attacks on population centers in Saudi Arabia.³²⁴

SYRIA AND SYRIAN-CONTROLLED LEBANON

Human Rights Developments in Syria

During 1991, Syria took steps to improve its long dismal human rights record. In May, the government of President Hafez al-Asad released around 1,500 Palestinian detainees, and between November 28 and December 18, it pardoned over 3,500 Syrian political prisoners. It is too early to determine whether these releases mark a new trend, since Syria continues to hold without trial over 2,500 detainees — some held

³²⁴ The findings of the report are discussed in the above chapter on Iraq.

since President Asad assumed power in November 1970.³²⁵

The Syrian government still denies the freedoms of expression and association to its twelve million citizens and puts severe restrictions on democratic participation in government. Despite recent gestures of political liberalization, real power remains in the hands of President Asad, who was confirmed for a fourth seven-year term (1992-99) by an officially reported 99.98 percent of the vote in a December 2 referendum in which he was the only candidate.

The government in 1991 succeeded in concluding two pacts with the Lebanese government of President Elias el-Hrawi that, in effect, recognize Syria's hegemony over Lebanon. Ostensibly limited to security and foreign-policy issues, the accords in practice give Syria the opportunity to restrict a range of human rights.

The state of emergency declared in Syria in March 1963 when the Baath Party first seized power and extended regularly thereafter gives Syrian security agencies free rein to arrest and detain suspected political opponents. Using a complicated web of martial-law regulations enacted under state-of-emergency powers, Syrian security forces have detained without trial thousands of prisoners, many of whom have been held in prolonged incommunicado detention. The scope of the state of emergency and martial law regulations was narrowed in 1990 and 1991 to permit the civilian courts to treat cases of embezzlement, smuggling, rations violations and other economic crimes as well as cases of official corruption — offenses which previously would have elicited the death penalty for serious offenders. However, cases relating to "state security" are still governed by martial-law rules. State-security crimes are loosely defined to include speaking out critically about the regime or joining outlawed political organizations such as the Muslim Brotherhood and the Party for Communist Action (PCA). Entrusted with carrying out the government policy of stamping out dissent are a dozen secret-police organizations employing thousands of agents and informers throughout Syria and Lebanon.

³²⁵ Middle East Watch's estimate of the number of political prisoners held in Syria is conservative. In its annual report issued on December 13, the major Syrian human rights group, Committees for the Defense of Democratic Freedoms and Human Rights, put the number of political detainees at 14,000, over and above an estimated 3,000 suspected dissidents who disappeared without trace.

The release in May of some 1,500 Palestinian detainees was apparently a result of the growing detente between the Syrian government and the Palestine Liberation Organization (PLO) in preparation for the Middle East peace talks. During the first ten months of the year, a total of 182 Syrian political detainees — 127 from the banned Party for Communist Action (PCA) and thirty from the Muslim Brotherhood — were also released.

The pardon of 3,500 Syrian political detainees near the end of the year was unprecedented. In the last week of November, some seven hundred detainees were released, immediately before the December 2 popular referendum on President Asad's fourth term. According to preliminary reports received by Middle East Watch, those released included opponents of the Persian Gulf war detained earlier in the year, four Jews detained in 1990 and 1991 for trying to emigrate without permission, and other recent detainees. Among the released were over thirty women arrested between 1984 and 1987, including Mona al-Ahmar, Sana' Huwajeh, Wafa' Idris, Zahra Kurdiyyeh, Rana Mahfouz, Lina al-Mir and engineer Hind al-Qahwaji.

On December 17, Muhammed Harba, Syria's minister of interior, announced that President Asad had pardoned 2,864 prisoners who had been detained "for acts committed against the state's security." Those pardoned were to be freed immediately. Diplomatic sources told Reuters that most of those pardoned were members of the fundamentalist Muslim Brotherhood who had committed armed attacks against the state.³²⁶ Syrian officials contacted by Middle East Watch put the number pardoned at 2,826. They also confirmed that the pardoned included Muslim Brotherhood and PCA members. Among those released were artists and writers associated with PCA, including Ali Sabr Darwish, Qassi al-Jundi, Ali al-Shehabi, Mustafa Latheqani and Abdel-Hakim Qtaifan. Thirty leaders of the Popular Nasserist Organization, an opposition group, including lawyer Muhammed Dakkou, journalist Abdel-Karim Jabr, Dr. Khaled al-Nasser, Dr. Mahmoud al-Oryan, and engineers Badreddin Fattal and Ali Ghabshah, were also pardoned.

Senior officials of the pre-Asad regime — some in detention for over twenty years — were not included in the amnesty. For example, Ahmed al-Swaidani, a former leader of the ruling Baath Party, entered his

³²⁶ Reuters, December 17, 1991; Associated Press, December 17, 1991; the official Syrian Arab News Agency, December 17, 1991.

twenty-third year in prison, while former Syrian President Nour el-Din al-Atasi and twelve of his ministers and senior supporters entered their twenty-first year in prison; none has been tried. In addition, dozens of long-term convicted political prisoners await release long after their sentences have expired. One is Mustafa Khalil Brayez, who was abducted in 1970 while in self-imposed exile in Lebanon and sentenced to fifteen years in prison for writing *Suqut al-Jaulan* (*The Fall of the Golan Heights*). The book blamed Hafez al-Asad, then minister of defense, for the military defeat at the hands of Israeli forces in June 1967. After Brayez's sentence expired in August 1985, his family lost contact with him and his whereabouts were unknown for several years. In November 1991, Middle East Watch received reports that he was being held in the general wing of al-Mezze prison in Damascus.

New political prisoners in 1991 include four members of the Workers Revolutionary Party and twenty-nine from the Arab Socialist Union Party (ASU). They were arrested even though the parties themselves are legal, apparently because they had distributed leaflets criticizing the Baath Party's monopoly of power. Among the ASU members arrested were Ahmed al-Khatib, a lawyer; his son, Tha'ir; and Najib al-Derdem, also a jurist. Hassan Isma'il Abdel Azim, a member of the ASU Politburo, was detained for two months during 1991 and then released. ASU publishing equipment was also confiscated.

With the Syrian government having joined the anti-Iraq alliance in the Persian Gulf conflict, scores of people were arrested and some detained for opposition to the Gulf war. In late January 1991, when fifty-three members of the Syrian Lawyers Association signed a statement criticizing the war, they were summoned before security officials and questioned, and some were arrested. The same fate befell fifty-two writers and artists who signed an anti-war protest.

Torture is routinely used in Syrian prisons to extract confessions. It is also used as a form of extrajudicial punishment that can be applied throughout a detainee's incarceration, leading to death or permanent injury in many cases. As in previous years, there were a number of deaths in custody, or soon after a prisoner's release from injuries believed to have been sustained while in prison. Jamal Hassino, a PCA member, was arrested in April 1990 as he was distributing leaflets protesting the death in detention of Khedher Jabar, another member of the party. Hassino was released in July 1991 but died a month later at the age of forty. Syrian human rights monitors believe that Hassino died as a result of severe torture received while in custody. Cases of death in custody in

1991 reported to Middle East Watch by Syrian human rights activists include those of Adnan Sa'ud, detained since September 1990, and Hussein Zaidan, who had been in prison since 1970. In neither case was an independent investigation conducted to determine the cause of death.

Reports from released prisoners describe unsanitary and overcrowded conditions in most Syrian prisons, with substandard food and bedding. It can take months, and even years, for the family of some political prisoners to be notified that their relative is in custody. Family visits are denied for many, especially those in military prisons. The largest and most notorious military prison is at Tadmur, where its 2,500 inmates are rarely allowed family visits. No improvement in these conditions was reported during the year.

Although the scope of political participation improved modestly during the year, as described below, the Syrian government's legendary ruthlessness in stamping out opposition continued to lead political opponents either to cease public adversarial political activity or to go into exile. Political opponents still remember the drastic actions taken by the Syrian government from 1980 to 1982 against the Muslim Brotherhood and the PCA. During the spring of 1981, after some Muslim Brotherhood elements were suspected of committing terrorist acts against government and party officials, security forces swept through the city of Hama, a stronghold of the Brotherhood, and killed hundreds of suspected members. When that did not end the Brotherhood's opposition, the Syrian army laid siege to the city in January and February 1982, and then shelled its residential neighborhoods. The historic downtown area was flattened, and other areas were similarly savaged. Approximately ten thousand residents are believed to have been killed and many more made homeless.

Members and sympathizers of the Muslim Brotherhood are still persecuted — even though some of its influential leaders, mainly in the Aleppo branch, were permitted to issue public statements supporting the government's controversial stand in the Gulf war. During 1991, thirty people were known to have been arrested and accused of belonging to the Brotherhood. By December, about 2,500 were believed to be in Syrian prisons on suspicion of belonging to this organization.

As the second most significant opposition group, the PCA continued to encounter persecution, particularly of its grassroots members. During the year, 129 are known to have been arrested for alleged membership in the party, making a total of seven hundred party followers who are believed to remain in detention. Most PCA leaders, who were arrested in

1980 and 1981, are still being held.

The Syrian Ministry of Information owns and runs most of the media outlets, including all television and radio stations and most newspapers. The closely monitored media practice self-censorship to adhere closely to the prescribed government line. Syrian journalists and writers, most of whom are on the government payroll, are kept in line through a combination of threats and rewards. Books and films, whether published in Syria or abroad, are heavily censored.

Foreign reporters' access to Syria is extremely limited and, when allowed, tightly controlled. Over the past decade, intimidation has been used to censor the foreign press, including by assassinating a number of leading foreign journalists. Syrian agents are believed to have been behind the 1980 assassination of Riad Taha, president of the Lebanese Journalists Association; the 1981 killing of Selim al-Lawzi, editor-in-chief of *al-Hawadeth (Events)*, a widely circulated conservative Lebanese weekly; and the 1985 murder of Michel al-Nimri, the Palestinian editor-in-chief of *al-Nashra (The Bulletin)*, a pro-PLO monthly published in Greece. All three journalists were vocal critics of the Asad regime. Syria is also assumed to have been behind the 1985 abduction in Lebanon, and the subsequent death in captivity, of the French writer Michel Seurat, who gathered considerable evidence of Syrian human rights abuses.

A number of writers and journalists have been held without trial for many years. Mustafa Khalil Brayez, discussed above, has been in prison since 1970. Marwan Hamawi, former head of the official Syrian news agency, has been held since 1975 on suspicion of pro-Iraqi Baath sympathies. Anwar Badr, Ridha Haddad and 'Imad Naddaf, all journalists previously with official media organs, are in detention for their alleged sympathy for the banned PCA.

During the Gulf war, as mentioned earlier, a group of writers critical of Syria's participation in the anti-Iraq alliance were questioned and some briefly detained. The government's reaction was remarkable only in that it was milder than its reactions to similar protests in the past, especially whenever sympathy to the rival Iraqi Baathist regime was suspected. Because of the controversial nature of Syria's decision to join the alliance, and President Asad's apparent awareness of the need to placate substantial public opposition to the U.S. stance in the Gulf war, the Syrian leader toured the country to defend his policies at public rallies.

Freedom of association traditionally has been severely limited in Syria. The government exercises tight control over the granting of operating permits for any organization. Professional groups, such as the

lawyers and medical associations, have been terrorized by the security apparatus when they have voiced the mildest criticism of the regime.

However, changes for nonpolitical associations may be in the offing. In late 1991, the official Syrian press ran unprecedented calls for democratization of the trade unions and popular organizations. It remains to be seen whether these calls, expected to be taken up by the forthcoming Baath Party quadrennial meeting in early 1992, will lead to genuine freedom of operation for these associations. But the signals indicate a willingness to loosen controls.

Political life in Syria is highly restricted, with the Baath Party dominating virtually all institutions, including the country's tame parliament. With the exception of the parties that make up the National Progressive Front, political organizations are not allowed to operate legally in Syria. Of the twelve traditional opposition parties, the activities of only two minor parties are tolerated: the Arab Socialist Union and the Revolutionary Workers Party.³²⁷

In May 1990, in the most recent national elections for the People's Assembly, nine thousand candidates ran for office. But opposition parties were not allowed to field candidates and more than forty independent candidates were forced by the government to withdraw. Only the Baath Party, which is headed by President Asad, and its junior partners in the National Progressive Front were allowed to hold campaign rallies. The turnout was poor — only forty percent of the eligible voters, according to official figures — and the balloting was fraught with irregularities. Of the 250 seats contested, the Front won 166, including 134 by the Baath Party, guaranteeing that the People's Assembly would continue to be a rubber stamp for President Asad's policies.

These elections were nevertheless significant in that independents won eighty-four parliamentary seats — an unprecedented one-third of the People's Assembly. It was also significant that the Baath Party gained barely half the seats, less than in any previous parliamentary election.

While these elections showed a limited official willingness to widen political representation, presidential elections remain mere formalities. On November 17, 1991, the People's Assembly unanimously approved President Asad, who was the only candidate, for a fourth seven-year term

³²⁷ Although the two parties are allowed to operate, thirty-three of their members are known to have been arrested in 1991 for distributing documents critical of the ruling Baath Party.

after his current term expires on February 29, 1992. Through a recent constitutional amendment approved at the behest of the ruling Baath Party, the election was moved forward from January 1992 to November 1991 to coincide with the anniversary of the 1970 coup that brought Asad to power.³²⁸

In the four presidential elections since Asad came to power in 1970, he won 99.2 percent of the vote in 1971, 99.6 percent in 1978, and 99.9 percent in 1985, according to official tallies; on December 2, 1991, the officially reported percentage in favor of ratifying a new presidential term for Asad was 99.98. In each election, Asad was the only candidate.

In a further indication of what may be a desire to open up the Syrian political process without a loss of actual power, President Asad alluded in a June speech to the need to "increase popular participation in political decision-making." This issue is on the agenda of both the Baath Party's forthcoming quadrennial meeting and the National Progressive Front's first-ever convention, both expected in early 1992. The Front, which is dominated by the Baath Party but includes a number of smaller parties, is reported also to be studying the possibility of expanding its membership by allowing new parties and independent individuals to join.

During 1991, without granting formal permission, the government appeared to tolerate the activity of two new small parties: the Arab Democratic Party (*al-Hizb al-Democrati al-Arabi*) and the National Solidarity Party (*Hizb al-Tadhamun al-Watani*). Their meetings were not disrupted and their members were able to distribute leaflets without adverse consequences. Both parties, which have announced their loyalty to President Asad, favor more economic liberalism and political pluralism than the Baath Party.

In preparation for the forthcoming Baath Party meeting, the official press has published proposals to enhance the role of the People's Assembly in scrutinizing government action and producing legislation. Toward the end of 1991, phrases such as "political pluralism," "parliamentary scrutiny" and "requirements of the changed circumstances"

³²⁸ Syria's 1973 constitution mandates holding a presidential election every seven years but no earlier than sixty days before the expiration of the president's term. Since Asad's current term ends on February 29, 1992, elections would have to have been held after January 1. The constitutional amendment allowed holding a new election within 120 days of the end of the previous term, making it possible to hold the election on November 17, 1991.

regularly appeared in the government-run media, indicating a degree of at least tacit official approval of these concepts. Another proposal would give permission to the minor parties of the National Progressive Front to publish their own newspapers.

Also scheduled for discussion before the Party meeting is a proposal for "energizing trade unions." Trade unions — currently mere extensions of the formal government and Baath Party structure — are being called upon to exercise internal democracy and to include in their ranks independents and members of parties other than the Baath and its Front partners. How far this process will be permitted to go, especially if the new blood challenges the ruling political orthodoxy, remains to be seen.

Although the Syrian government is not formally based on sectarian lines, most of the senior positions in the government, especially in the military and security fields, are dominated by members of the Alawi sect, a mainly Syrian-based offshoot of Islam that is close to the Shi'a branch. The Alawis constitute only twelve percent of the population; seventy-six percent of Syrians belong to the mainstream Sunni branch of Islam, with sizable Christian and Druze communities accounting for an additional eight and three percent. Most Syrians feel, with some justification, that Alawis, who for centuries had been an underclass, now enjoy undue influence and the fruits of a deliberate government policy of favoritism.

The largely Sunni Kurds, at eight percent, constitute the largest ethnic minority. For many years, Syria's 950,000 Kurds bore the brunt of the government's policy of "Arabization." Thousands were arbitrarily deprived of their Syrian citizenship in the 1960s, and many others were forcibly resettled in the 1970s and replaced by an "Arab belt" near Syria's northern border. While the resettlement policies have been discontinued, cultural expression by Kurds is limited to their villages. Political expression is tolerated only for Kurds opposed to the Iraqi and Turkish governments. In the 1990 elections, however, a significant number of Kurdish politicians were elected to the People's Assembly, for the first time in a generation. Among them was Hamid Haj Darwish, secretary of the Syrian branch of the Kurdish Democratic Party, the principal standard-bearer of Kurdish nationalism throughout the region.

The Jewish community, which has shrunk to less than four thousand, is subject to close surveillance, and its political activity and freedom of emigration are tightly restricted. In May 1991, Eli and Selim Swed, two Syrian Jewish brothers arrested in November 1987, were sentenced after a secret trial to six-and-a-half years in prison, including the years they had spent in detention prior to trial, for allegedly having visited Israel —

an illegal act under Syrian law.

On November 28, 1991, two Syrian Jewish citizens, Rahmoun Darwish and Joseph Sabato, were released. They had been held without trial since September 25, 1990, when they were arrested with their families as they were trying to flee Syria. Also, on November 28, Syrian Jewish brothers Subhe and Sa'id Kastika were released after being detained without trial since May 1, 1991 for trying to leave the country without permission. Their wives and children, who were arrested with them, were released in late May.

Human Rights Developments in Syrian-Controlled Lebanon

The Lebanese government, headed by President Elias el-Hrawi, was installed in November 1989. Until October 1990, however, it was forced to coexist with the rival government of General Michel Aoun, the Maronite army leader appointed prime minister by former President Amin Gemayel in the last hours of his administration. The rivalry between the two feeble governments in West and East Beirut marked the nadir of the long Lebanese descent into near anarchy that began with the outbreak of civil war in April 1975.

The fifteen-year civil war wreaked havoc on the once flourishing Lebanese civil society, destroying what had been the cultural center of the Arab world, a haven of free speech and coexistence between different ethnic and religious groups. Human rights values were a chief victim of the internecine fighting, which was epitomized by spates of hostage-taking, first among rival Lebanese factions and later from the Western expatriate community.

In June 1976, with at least tacit encouragement from the United States, Syria sent its army into Lebanon as part of Arab League efforts to stop the fighting and preserve the Maronite-dominated status quo. Since then, Syrian forces — today some forty thousand — have effectively controlled most of Lebanese territory. Their human rights practices in Lebanon mirror their government's behavior in Syria itself, although in recent years the record of violations in Syrian-controlled Lebanon has been worse than in Syria.

Syrian forces in Lebanon have detained without trial thousands of Lebanese and Palestinian opponents, close to 1,500 of whom are believed to remain in prison. Many are known to have been transferred to Syrian prisons, in violation of international law prohibiting their transfer outside

occupied territory.³²⁹ Syria has never allowed the International Committee of the Red Cross or any other independent organization to visit its detention centers. Neither has it provided any accounting of those detained by its forces.

During 1991, Lebanon took significant steps toward restoring normal life. Most government agencies resumed operation and the parliament met regularly after the appointment of forty new deputies in June to fill vacancies.³³⁰ Although the Lebanese government has yet to re-establish effective control outside the perimeter of Beirut, it has sanctioned Syria's close involvement in Lebanese affairs through three major documents: the October 1989 Ta'if Accord, the May 1991 Lebanese-Syrian Brotherhood, Cooperation and Coordination Treaty, and the September 1991 Lebanese-Syrian Security Agreement.

On October 16, 1991, the Security Agreement was endorsed at the first meeting of the newly formed Lebanese-Syrian Higher Council. The Council is headed by the presidents of the two countries and includes the highest officials of each government. In implementing the Ta'if Accord, the bulk of Syrian forces are scheduled to be redeployed outside Greater Beirut, where most of Lebanon's population is concentrated, before the end of 1991. But as of early December, the redeployment had not taken place. Even if it occurs, the redeployment is not expected to diminish Syrian influence on security matters in Lebanon, including in the Beirut area.

In October 1990, Syrian forces and a pro-Syrian Maronite militia led by Eli Hobeika took joint action against rebel General Michel Aoun. In retaliation for alleged unwarranted killings by Aoun's forces of Syrian troops involved in the retaking of Aoun's last stronghold, scores of his supporters were executed on the spot and others left to die. Both the Syrian and Lebanese governments continue to refuse to investigate the circumstances of these killings, and have stymied family efforts to obtain independent verification of the causes of death.

³²⁹ See Article 49 of the Fourth Geneva Convention of 1949, which both Lebanon and Syria have ratified.

³³⁰ The Lebanese government is acutely strapped for the funds needed to resume normal operations. In August 1991, it announced that its new budget of LL 1,153 billion (the equivalent of \$1.28 billion) will have a projected deficit of sixty-two percent.

Michel Aoun took refuge in the French Embassy on October 13, 1990 and was allowed to leave for France on August 29, 1991, two days after the Lebanese government granted him a conditional pardon. Two of his close aides, 'Isam Abu Jamra and Edgar Ma'louf, were also pardoned. However, during much of 1991 suspected Aoun supporters were regularly rounded up by Lebanese security forces, aided, according to Lebanese sources, by Syrian intelligence officers. In late July, about forty were arrested in Kesrouan, north of Beirut, following the distribution of leaflets supporting Aoun and criticizing President Hrawi and the Maronite patriarch. Also in late July, other arrests of some twelve people accused of distributing illegally produced Lebanese banknotes carrying pictures of the ousted general took place in the port city of Jounieh. On August 1, a further fifty-eight Aoun supporters were arrested as they held a demonstration in Ashqout. There have been credible reports from their families that those detained have been tortured; the families also complain that the prisoners have been denied legal counsel and family visiting rights.

On August 26, 1991, the Lebanese Chamber of Deputies, Lebanon's parliament, approved a controversial amnesty for crimes committed during the civil war. The amnesty applies to all crimes committed before March 28, 1991, except for massacres and assassinations or attempted assassinations of political leaders, religious figures and diplomats. The amnesty thus absolves all those responsible for a range of killing, torture, hostage-taking and other abuses.

In addition to Aoun supporters, Syria still detains close to 1,400 other Lebanese and Palestinian residents of Lebanon. The Lebanese government has failed to press publicly for their release or trial under Lebanese law.

Syrian forces in Lebanon have been implicated in the murder of a number of Lebanese leaders and journalists who dared to challenge Syria's policies. These forces used kidnapping and assassination to silence critics — with considerable success. A dozen highly publicized assassinations of prominent politicians, journalists and scholars who spoke critically of the Asad regime took place between 1972 and 1989. In May 1989, Subhi al-Saleh, an independent and widely respected Lebanese Muslim scholar, was reportedly killed by Syrian agents, apparently because of his support for the reunification of a Lebanon independent of Syria. As a result of this terror campaign, the Lebanese press, once the least restrained in the Arab world, has been forced to toe a Syrian-drawn line, leave Syrian-controlled Lebanon, or cease functioning.

During 1991, the Lebanese government did Syria's bidding by exerting pressure on the local press to refrain from criticizing Syria. In September, Maurice Khawwam, Lebanon's chief public prosecutor, sent a letter to the Lebanese Journalists Association giving notice of the prosecutor's intention to reactivate restrictive press laws. Khawwam reminded journalists:

[O]ne of the forbidden topics explicitly banned in Legislative Decree No. 104 of June 3, 1977 is the critical discussion of the president of the Lebanese Republic or of presidents of foreign countries. Such criticism has caused Lebanon in the past many negative repercussions which we want to avoid repeating. I especially would like to draw your attention to Article 23 of Decree 104, which stipulates that 'Should a publication critically discuss the person of the president of a foreign country, the public prosecutor shall initiate prosecution even when there is no complaint from the aggrieved party.'

The public prosecutor served notice on the editors that he intended to prosecute violators vigorously. It was widely understood by journalists that the main object of this directive was to stop criticism of Syrian policies in Lebanon.

The recently signed, but still officially secret, Lebanese-Syrian Security Agreement stipulates a ban on "all military, security, political and media activity that might harm" either country, according to texts published in Lebanese newspapers. The agreement also reportedly requires both countries to "refuse to give refuge to, facilitate the passage of, or provide protection to persons and organizations that work against the other state's security." These terms may be intended primarily to prevent Syrian exiles from operating in Lebanon. The ban on "political and media activity" provides additional legal cover for the *de facto* ban that Syria has enforced in most of Lebanon since 1976 on political opposition to Syria.

Parliamentary elections in Lebanon were last held in 1972, prior to the outbreak of the civil war. Between 1972 and 1991, the Chamber of Deputies lost thirty-one of its ninety-nine members, mostly to natural causes. On June 6, 1991, the Lebanese government filled these vacancies. It also appointed nine additional deputies to occupy the seats created by the Ta'if Accord of 1989, to redress the imbalance between Christians and Muslims in the sectarian-based allocation of seats. The total number of

seats was increased from 99 to 108, divided equally between Christians and Muslims, instead of the old five-to-four Christian-to-Muslim ratio. However, the accord left intact the traditional sectarian division of government employment, which in the past led to charges of discrimination against the smaller of the fourteen recognized sects.

Although no date has been set, the Lebanese government has promised new elections in the summer of 1992. The conduct of these elections will be an important indicator of Lebanon's (and Syria's) commitment to democracy in Lebanon.

Stateless residents of Lebanon — the Wadi Khaled Arabs in northern Lebanon, the Maslakh Arabs of Beirut and long-term Kurdish residents of Lebanon — are denied Lebanese citizenship and the rights and privileges deriving from citizenship, such as the right of political participation and the right to freedom of travel, as well as authorization to seek employment without a work permit. In the past, successive Lebanese governments promised to resolve the legal limbo of the stateless in Lebanon but nothing transpired. In a positive development, on July 3, 1991, the Lebanese government abolished a 1983 regulation forbidding non-Lebanese from working in fifty-one specified trades.

Most Palestinians in Lebanon came as refugees displaced by the creation of Israel in 1948. Prior to the Lebanese civil war, they were treated as foreign residents for the purpose of employment and other aspects of their lives. In addition, their movement was restricted and they were subjected to arbitrary arrest and intimidation by Lebanese security forces.

As the Lebanese government prepares to reassert its control over all of Lebanon, the Palestinian community is justifiably concerned about a return to pre-civil war practices. Despite promises by the Lebanese government to improve Palestinian access to employment and to form a Lebanese-Palestinian committee to study other civil rights, the 300,000-strong Palestinian community in Lebanon is apprehensive about the future. The heavy-handed manner in which the Lebanese army wrested control, in early July, of Palestinian-dominated areas of southern Lebanon around Sidon and Tyre, where large refugee camps are controlled by Palestinian armed factions, resulted in fifty-two killed, 184 wounded, and 574 Palestinians taken prisoner during three days of fighting; most of these appear to have been combatants.

Most Palestinians arrested during the Lebanese army's takeover of the south have been released, but that only partially reassured the Palestinian community. On July 30, Palestinian representatives met

Lebanese Prime Minister Omar Karameh and Speaker of the Parliament Hussein al-Husseini. Meetings with other senior officials followed on August 16 but have yet to produce a consensus on Palestinian civil rights in Lebanon. As a result, the potential for conflict between the Palestinian community and the Lebanese army, backed by Syria, remains high.

The fifteen-year civil war led to the emigration of hundreds of thousands of Lebanese, many of whom are now trying to re-establish themselves in Lebanon. The war also caused the internal displacement of more than 200,000 persons, as Lebanese of different sects left their homes to avoid collective retaliation. Christian families fled Muslim-dominated areas such as Damour, south of Beirut, and mountainous villages in the Druze-dominated southern Shouf region. Muslims fled the suburbs of East Beirut and other Maronite-dominated areas. Muslims also fled southern villages in Israel's self-declared security zone and the surrounding areas. Return of the displaced persons to their previous homes is hampered by the still-shaky truce among the different militias, and the seemingly low priority given to this matter by the Lebanese and Syrian governments.

The Right to Monitor

On December 10, 1989, an independent group, Committees for the Defense of Democratic Freedoms and Human Rights in Syria, was established. While it has been able to operate active branches in Paris and Geneva, the group has had to maintain a clandestine presence in Syria itself. Since April 1990, it has published a regular Arabic-language bulletin, *Saut al-Democratiyya* (*Voice of Democracy*).

There are also a number of external organizations that monitor human rights of specific groups in Syria, such as Kurds and Jews. There are also monitoring committees specializing in prisoners of particular political groups, such as the Muslim Brotherhood, the Party of Communist Action, and the Baath Party-Iraq Branch, as well as Palestinian prisoners. All of these groups are based outside the country, as the Syrian government does not permit the open operation of any human rights organization.

Although Syria has ratified several key human rights instruments, including the International Covenant on Civil and Political Rights, it does not allow independent monitoring of its compliance with these instruments. Similarly, although it has signed the four Geneva

Conventions, it does not allow the International Committee of the Red Cross to visit its Lebanese and Palestinian detainees captured in Lebanon.

Independent Lebanese human rights groups usually operate outside the country for fear of almost-certain Syrian retribution. A center for human rights, which prefers not to publicize its identity, is based at one of Lebanon's universities but has had to conduct most of its activities abroad. Another group, Lebanon Information Processing Service, gathers and distributes information on Lebanon through a monthly bulletin, paying particular attention to humanitarian and human rights issues; it is based in London to maintain its freedom of operation. The Council of Lebanese American Organizations, based in the United States, represents those loyal to ousted General Michel Aoun and reports on human rights abuses by Syrian forces in Lebanon from a Maronite viewpoint.

Middle East Watch's repeated efforts to visit Syria or to solicit information from the Syrian government have been met by a wall of silence. As a result, most of Middle East Watch's reporting on Syria has been based on exile testimony and on an unofficial visit to the country.

U.S. Policy

U.S. policy toward Syria in 1991 appeared driven by three overriding factors. Paramount during the first two months of the year was the goal of maintaining the alliance formed the previous fall to drive Saddam Hussein from Kuwait. For the rest of the year, U.S. policy was principally guided by the goals of assuring Syria's participation in the Middle East peace process and securing the release of American hostages held in Lebanon. In working toward these three goals, U.S. officials refrained from voicing public criticism of most human rights violations by the Syrian government, whether in Syria or in Lebanon.

U.S.-Syrian relations have improved considerably under the Bush Administration. The two governments worked closely in Lebanon, both in opposing General Michel Aoun's rebellion and supporting the Ta'if Accord concluded in October 1989 to settle the Lebanese civil war. They also supported the presidential candidacy of René Mou'awwadh and, after he was assassinated, the candidacy and presidency of Elias el-Hrawi. U.S. support — against the wishes of its allies France and Israel — was key in garnering international recognition of the Syrian-backed Hrawi government.

Syria's decision to join the anti-Iraq military coalition further improved bilateral relations. In November 1990, to consolidate the new alliance, President Bush met in Damascus with President Asad, the Syrian leader's first meeting with a U.S. president since 1977. In addition to committing its forces to fight alongside U.S. troops, hitherto unthinkable, Syria helped to convince its ally Iran to remain on the sidelines of the conflict.

Syrian cooperation with the United States in the release of Western hostages held in Lebanon was acknowledged by U.S. officials throughout the year. In a September 19 press conference in Damascus held jointly by U.S. Secretary of State James Baker and Syrian Foreign Minister Farouq al-Shara', the only human rights issue mentioned by either official was the release of Western hostages. According to Secretary Baker, "President Hafez al-Asad pointed out that he and the Syrian government will do their best to help obtain the release of the hostages without conditions. He will keep us informed in case of any developments." This cooperation was crowned with the release of Terry Anderson, the last American hostage, on December 4, 1991. During none of Secretary Baker's seven visits to Damascus in 1991 did he comment publicly on any human right violations by the Syrian government.³³¹

In an apparent indication of the Bush Administration's desire not to upset relations with Syria, the Syrian government has been cleared, for the time being at least, of involvement in the bombing in 1988 of the Pan Am passenger plane over Lockerbie, Scotland, which killed 270. Until the indictment of two Libyan intelligence officers in connection with the bombing, Syria had been deemed the state most likely to have been responsible. The Popular Front for the Liberation of Palestine-General Command (PFLP-GC), led by former Syrian army officer Ahmed Jibril, was the main suspect named by British and German investigators. The PFLP-GC is based in Damascus and has many of its facilities in Syria and the Syrian-controlled parts of Lebanon. It also has close ties to the

³³¹ According to a report in the French daily *Libération*, U.S. officials provided the Syrian government with a list of 1,900 political prisoners and requested their release. (Daniel le Gac, "Le dilemme du général Assad," November 7, 1991) But State Department officials contacted by Middle East Watch denied the report. They did confirm that the issue of political prisoners was raised by the United States in a formal démarche, in which a small number of long-term prisoners were named.

Iranian government. The Asad government has consistently rebuffed U.S. efforts to secure the closure of the PFLP-GC's bases, which the U.S. government regards as terrorist training facilities. According to Syria, the organization is engaged in legitimate military activity against Israel.

In May 1991, Morris Busby, a counterterrorism adviser to Secretary Baker, led a high-level delegation to Syria to discuss "the general question of terrorism." Despite press speculation that Syria may be dropped from the U.S. list of states supporting terrorism, it remains on the list along with Cuba, Iran, Libya and North Korea. In September, a U.S. State Department official told Middle East Watch that the United States and Syria have "great differences on the issue of terrorism," explaining that the Syrian government "has kept the entire terrorism structure intact both in Syria and in the areas under its control in Lebanon." In a November 20 hearing before the House Subcommittee on Europe and the Middle East, Edward Djerejian, assistant secretary of state for Near Eastern and South Asian affairs, said that the United States was not planning to remove Syria from the list of terrorist nations.

The Bush Administration's quiet but assiduous cultivation of President Asad gained a considerable reward when Syria agreed to attend the U.S.- and Soviet-convened Middle East peace conference, which opened in Madrid on October 30. In the November 20 House subcommittee hearing, Secretary Djerejian made clear that this goal had been paramount in the Administration's policy toward Syria. His lengthy opening statement outlining U.S. priorities in the region made no mention of human rights.

Responding to questions raised during the hearing — his first since he became assistant secretary after years as ambassador to Syria — Secretary Djerejian said that the Administration's "level-headed" approach to Syria had been based on asking the "fundamental questions." These, he spelled out, were: "Do we have any mutuality of interests in the Gulf? Do we have any mutuality of interests in Lebanon? Do we have any mutuality of interests in the Arab-Israeli peace process?" As a result of this pragmatic approach, he said, three things were achieved: the signing of the Ta'if agreement, Syria's joining the U.S. alliance in the Gulf, and Syrian attendance at the Madrid Middle East peace conference. In answer to a question, Secretary Djerejian also mentioned that the United States had obtained a commitment from the Syrian government to permit family reunification by easing travel restrictions for its Jewish citizens.

Syria reaped significant benefits from its role in the Gulf crisis. It was able to crush the rebellion of General Aoun in October 1990, and impose

its choice of government in Lebanon, without censure from the United States for the excessive loss of life that occurred. Syria also received substantial economic aid from U.S. allies in Western Europe, Kuwait and Saudi Arabia.

In April 1991, Saudi Arabia agreed to finance a \$1 billion arms package to provide Syria with advanced Scud-C missiles, SU-24 fighter planes, M-9 missiles and T-72 tanks from a number of sources including China, Czechoslovakia, North Korea and the Soviet Union. U.S. pressure on Czechoslovakia to back down from the deal prompted the official Syrian press to criticize the United States in terms not heard since the formation of the alliance between the two countries during the Gulf crisis. Despite the reported U.S. pressure, Czechoslovakia in May reiterated its intention to go ahead with the deal.

There are also indications that U.S.-Syrian trade was encouraged by the improved atmosphere. In April 1991, it was announced that Baxter International, a large U.S. medical-supply company, had reached agreement with Syria to build a pharmaceutical plant to supply the Syrian armed forces' hospitals with intravenous solutions.

Demands by U.S. labor groups to deny Syria trade privileges under the General System of Preferences (GSP) have yet to produce results. Since 1988, the AFL-CIO has petitioned the U.S. trade representative under Sections 502 and 504 of the U.S. Trade Act of 1974 to remove Syria from the list of GSP-eligible countries for its failure to adhere to minimum worker-rights standards and because of its links with terrorism. In April 1991, in response to the AFL-CIO's 1990 petition, the White House ordered a review of Syria's eligibility. Two months later, U.S. Trade Representative Carla Hills ruled in Syria's favor, the fourth consecutive rejection of the AFL-CIO's petition.

Since 1989, the United States has intensified its pressure on the Syrian government to curtail drug trafficking from Syrian-controlled areas of Lebanon in which Syrian army officers have been implicated. In 1991, these efforts included an August visit by a congressional delegation led by Representative Charles Rangel to discuss the problem of drug trafficking. A State Department official told Middle East Watch that until Syria cracked down on the drug trade, there would not be any U.S. aid or multilateral loans to Syria, meaning that the United States would use its influence or its veto to block loans to Syria by international lending agencies. Probably as a result of these pressures, the Syrian authorities made several announcements during the year of major drug raids in Lebanon and the confiscation of drugs smuggled from Lebanon into

Syria. On September 2, Syrian and Lebanese troops conducted a concerted operation to destroy hashish plantations in the western Beqa' valley.

The Work of Middle East Watch

Following the release of its major September 1990 report, *Human Rights in Syria*, which documented human rights violations in Syria under the Asad regime, Middle East Watch continued to monitor the observance of human rights in Syria and Syrian-controlled Lebanon. In September 1991, Yale University Press published an updated version of the report under the title, *Syria Unmasked: the Suppression of Human Rights by the Asad Regime*.

In October 1991, Middle East Watch sent a letter to Vice President Abdel Halim Khaddam asking for clarification of the case of Eli and Selim Swed, the two Syrian Jewish brothers who were convicted and sentenced in a secret trial to six-and-a-half years in prison for reportedly traveling to Israel.

On October 28, Middle East Watch released a newsletter, "The Madrid Peace Conference: The Human Rights Record of the Principal Regional Parties," which included chapters on Syria and Lebanon. The newsletter documented human rights abuses by the conference participants and called on them to include a discussion of human rights in their bilateral negotiations.

During the conference, Middle East Watch representatives contacted various delegates to impress on them the importance of human rights as an element of the peace process. An informal meeting was held with members of the Syrian delegation, including Nusrat Haider, head of the Constitutional Court, the country's top judicial official, who offered to discuss Syria's legal system with Middle East Watch representatives if they came to Syria.

Despite this invitation, it was unclear whether visa approval would be granted to a Middle East Watch mission to enter the country. By the end of 1991, there had been no opportunity to test the offer. However, on July 18, Middle East Watch had written to Ambassador Waled al-Moualem in Washington asking permission to conduct a mission later in the year; no reply was ever received, just as no reply was given to earlier attempts to contact the Syrian government during research for our September 1990 report.

During 1991, Middle East Watch worked closely with the New York-based Committee to Protect Journalists to help secure the release of the Western hostages being held in Lebanon and of all other detainees being held outside the framework of law. Regular meetings were held on the subject with U.S. officials and with Washington- and New York-based foreign diplomats; the subject was also raised in meetings in Tehran with senior Foreign Ministry officials. An opinion article was published in *The New York Times* in July calling for all illegally held detainees in Lebanon to be put on the same footing in the carefully orchestrated package deal then being worked out with all parties to the hostage affair by U.N. Secretary-General Javier Pérez de Cuellar.

On December 5, Middle East Watch issued a public statement welcoming the release of Terry Anderson, the last American hostage held in Lebanon. The statement called for the release of all Lebanese (and Palestinian residents of Lebanon) being held illegally by Syria and Israel. It called on Syria and Israel to allow immediate visits to all detainees by family members and the International Committee of the Red Cross. Middle East Watch also called on the Hrawi government to establish a tracing agency for the thousands who disappeared during the Lebanese civil war and are still missing.

HUMAN RIGHTS WATCH

UNITED STATES

Human Rights Watch, through its various divisions, increased its work on U.S. human rights and humanitarian law violations in 1991. Government actions relating to the war in the Persian Gulf produced human rights concerns at home and abroad. In January and February, the Fund for Free Expression criticized the Defense Department's policies restricting news-media coverage of the war, and the Federal Bureau of Investigation's program of questioning Arab-Americans in the United States. In November, Middle East Watch reported on violations of the laws of war by both sides to the Persian Gulf War which had resulted in needless civilian casualties.

In July, following the videotaped beating of Rodney King by officers of the Los Angeles Police Department, Human Rights Watch released a report criticizing the federal government for its passivity in responding to the problem of police brutality in the United States. In November, Human Rights Watch released a study of prison conditions in the United States, following an Americas Watch newsletter in May on prison conditions in Puerto Rico.

The Fund for Free Expression issued a series of reports on U.S. free expression issues, including "SLAPP" libel suits used to intimidate community and public interest organizations, censorship of the student press, and the erosion of the right to freedom of expression in decisions of the Supreme Court's 1990-91 term. The Fund also criticized the Bush Administration's proposal for secret courts to try suspected alien "terrorists," comparing it with similar provisions in other countries criticized by the State Department in its annual human rights report.

The Fund took part in a national coalition to overturn the Supreme Court's decision upholding federal regulations that barred federally funded family planning clinics from counseling clients on the availability of abortion as an option. Helsinki Watch and the Fund urged Congress to remove from the Immigration and Naturalization Services "lookout list" persons who were listed solely because of their political beliefs.

Prison Conditions

In November, after a year-long study entailing visits to more than twenty institutions in the United States and Puerto Rico, including federal, state and INS institutions, as well as jails, Human Rights Watch issued a report entitled *Prison Conditions in the United States*. The report raises numerous concerns about the human rights aspects of incarceration in the United States and about the difficulties in securing access to prisons.

One of the most troubling aspects of the human rights situation in U.S. prisons is the use of super-maximum-security facilities (called "maxi-maxis" in prison jargon) to confine inmates deemed especially dangerous. Conditions in these facilities are particularly difficult to bear and often fall below the minimum standards established by the U.N. Standard Minimum Rules for the Treatment of Prisoners. In addition to the federal system, currently thirty-six states have such facilities. Inmates confined to maxi-maxis are essentially sentenced twice: once by the court, to a certain period of imprisonment, and the second time by the prison administration, to confinement in maxi-maxis. This second sentencing is open-ended, limited only by the overall length of an inmate's sentence, and is meted out without the benefit of counsel.

Among the violations of the U.N. minimum standards observed by Human Rights Watch in the course of researching the report were:

- o Uninterrupted extended confinement in windowless, badly ventilated cells, such as in the Q-Wing of the Florida State Prison at Starke.
- o Lack of access to educational programs, as in the elimination in 1991 of all teaching and counseling staff positions at the prison in Southport, New York.
- o Denial or sharp reduction of time outdoors, in violation of the U.N. Standard Minimum Rules which mandate at least one hour a day of outdoor exercise.
- o The use of handcuffs as a disciplinary measure, as seen in the Broward institution for women in Florida.
- o The use of collective punishment at the Krome INS detention center in Florida and the Otis Bantum Center on Rikers Island in New

York.

Human Rights Watch made the following recommendations regarding the human rights aspects of imprisonment in the United States:

- o Maximum-maximum security facilities should be used only under supervision that is independent from correctional administration. Even then, they must meet the test of the U.N. Standard Minimum Rules for the Treatment of Prisoners.
- o In jails, classification and record keeping must be improved, to avoid situations in which nonviolent offenders are housed with dangerous and predatory criminals. Limits should be imposed on the duration of a sentence that may be served in a jail. In no case should the limit be longer than one year.
- o Denial of access to reading matter should never be used as a disciplinary measure.
- o Steps should be taken to assure work for all inmates capable of working.
- o Prison officials should make every effort to confine inmates as close to their home as possible so as to facilitate the maintenance of family bonds.
- o All inmates should have access to telephones.
- o Prisons should encourage access for inmates' relatives or friends, since maintaining these bonds gives inmates a better chance of staying out of trouble upon their release.
- o The trend in the federal system of granting a diminishing number of furloughs to inmates of minimum security facilities should be reversed, and the granting of furloughs to nonviolent inmates, particularly those serving sentences far from home, should be liberalized.
- o In circumstances in which security considerations make it impossible to provide inmates with privacy, guards of the same sex should be

used.

- o A review of the cases of Cuban inmates in legal limbo all over the country should be undertaken immediately. No inmate should be left in prison without knowing the duration of his or her sentence.
- o Incarceration of noncriminal illegal aliens should stop immediately.
- o Outside observers should have access to prisons, since access by outside observers is an important way of preventing abuses in prisons.

In May, Americas Watch released a newsletter on prison conditions in the U.S. Commonwealth of Puerto Rico. The paper found that poor prison conditions stemmed from an overall abdication of authority by prison administrators, that women are singled out for contraband searches, and that the transfer of inmates to prisons in the mainland United States has a detrimental effect on an inmate's bond with relatives and is often used as a disciplinary measure. A version of this paper was presented at a conference on prison conditions in the Caribbean held in May in Trinidad.

Police Brutality

The brutal and unprovoked beating — fortuitously videotaped by a bystander — by Los Angeles police officers of motorist Rodney King focused world attention on police practices in the United States. In the wake of this event, Human Rights Watch issued a report on an undercovered aspect of the issue — the passivity of the federal government in combating such abuse. The report, issued in July, found that "violations of human rights by local police has become a sort of fault-line in United States legal-political life, causing occasional political earthquakes...yet the federal government has never created effective means of monitoring, much less controlling, abuses."

Human Rights Watch argued that this "hands-off" approach — treating police brutality as a "local" issue — amounts to an abdication of the federal duty to guarantee respect for basic human and constitutional rights. This stands in sharp contrast to the federal government's active intervention, over the past forty years, in combating other violations of

civil rights enshrined in the U.S. Constitution and international human rights law, in such areas as employment, housing and voting discrimination.

The elements of the passive federal role detailed in the report include:

- o extremely narrow federal criminal jurisdiction to prosecute abusive police officials.
- o the lack of a recognized right for the Justice Department to seek injunctive remedies against systematically abusive police departments.
- o a failure by the federal government, including the Justice Department, to collect pertinent data on the scope and dimensions of the problem.
- o a passive Justice Department role in developing standards of command and accountability that would foster respect for human rights.
- o an unwillingness to use such means as the withholding of federal funds as a tool to deter systematic abuse by police departments.

The report recommends that steps be taken in each of these areas so that the federal government, particularly the Justice Department, can live up to its duty to enforce respect for the right to be free of violent police abuse.

The Air War in Iraq

In November, Middle East Watch issued a report examining the conduct of both sides to the air war in the Persian Gulf, including an extensive analysis of the U.S.-led military coalition's air campaign against Iraq. The report, *Needless Deaths in the Gulf War: Civilian Casualties During the Air Campaign and Violations of the Laws of War*, was prepared as a contribution to the public debate about the conduct of the war and as an effort to draw attention to violations and possible violations of humanitarian law. It draws conclusions, and also requests additional

information from the U.S. Defense Department and other allied military commands. It is hoped that the information and analysis in the report will be used by the Pentagon to conduct a more thorough examination of its compliance with the rules of law than reflected in its preliminary report about the war submitted to Congress on July 16, 1991. A final report is due to Congress no later than January 15, 1992. Both reports were mandated by legislation.

Throughout the Gulf War, Pentagon and allied commanders repeatedly stressed that all feasible precautions were being taken to avoid harm to civilians, as required by the laws of war. Following the war, Pentagon officials suggested that whatever civilian deaths did occur were the product of inevitable errors rather than any substandard conduct on the part of allied forces. The Middle East Watch report challenges this carefully constructed image of a near-flawless allied campaign. Through interviews conducted during the war with scores of Iraqi residents of various nationalities who had fled the aerial bombardment for the safety of Jordan, and through subsequent research, the report provides a detailed picture of the allied bombardment as it affected Iraqi civilians.

The conduct of the campaign was evaluated under the laws of war, primarily the standards set forth in the First Additional Protocol of 1977 to the 1949 Geneva Conventions (Protocol I). Although the United States has not ratified Protocol I, most of the standards relied on by Middle East Watch to evaluate allied conduct have been declared by the State Department to be binding on all nations as a matter of customary international law. The Pentagon also has largely incorporated these standards into the Air Force manual.

The allies' overwhelming air superiority and their precision weaponry provided an exceptional opportunity to conduct the bombing campaign in strict compliance with legal requirements. Although in many if not most respects the bombing campaign was consistent with the requirements of the laws of war, Middle East Watch concluded that the allies violated these laws in several respects, both in the selection of targets and in the choice of the means and methods of attack. These violations appear not to have been the product of unavoidable miscalculation but a result of deliberate allied decisions to take less than the maximum feasible precautions to avoid civilian casualties required by the laws of war.

Middle East Watch found that allies committed the following violations of the laws of armed conflict in the choice of the means and methods of attack:

- o The customary legal requirement codified in Article 57 of Protocol I requires parties to a conflict to take all feasible precautions to avoid civilian casualties. One obvious way to fulfill this requirement is by adjusting the time of attack to minimize the risk of civilians being present. Attacks on military targets in urban areas where many civilians can be expected to be found during the day should be conducted at night. However, in several attacks in urban areas — in Nasiriyya, Falluja, Samawa and Hilla — allied planes dropped their bombs during the day, needlessly killing hundreds.
- o The allies appear not to have made full use of precision-guided weapons to minimize civilian casualties in urban areas. These "smart" weapons, according to the Pentagon, had an accuracy rate of ninety percent, while "dumb" bombs were said to have hit their targets only twenty-five percent of the time. Although the allies during the war fostered the impression that only precision weapons were used in urban areas, the Pentagon has since revealed that smart weapons accounted for a mere 8.8 percent of the munitions used. Moreover, some of these precision weapons were used not in urban areas but against hardened targets in the Kuwaiti military theater. The Pentagon and its allies have remained largely silent about where they dropped the dumb bombs that made up the remaining 91.2 percent of the munitions used. For example, while downtown Baghdad, where a small international press corps was present, was said to have been attacked with only precision weapons, Middle East Watch found that Basra and other cities in southern Iraq, which were largely closed to foreign journalists, appear to have suffered considerable damage to civilian structures, suggesting use of less advanced bombs in allied raids.
- o Middle East Watch found that under the laws of war, the United States should have issued a warning before attacking the Ameriyya air raid shelter in Baghdad. Failure to do so resulted in the loss of two to three hundred civilian lives. Quite apart from the evidence cited by the Pentagon to suggest that the facility was being used for military purposes, the Pentagon has conceded that it knew the facility had been used as a civilian air raid shelter during the Iran-Iraq war. Article 65 of Protocol I provides that even if a civil defense structure is used for military purposes, it cannot be attacked until a warning is issued and a reasonable amount of time is given for civilians to

respond. Although the United States has not stated one way or the other whether it considers Article 65 to be binding as a matter of customary international law, the rule is a fair interpretation of the general duty, codified in Article 57 of Protocol I, to give "effective advance warning" of attacks that may affect the civilian population, which the United States recognizes as customary law.

Middle East Watch also found that the allies violated the laws of war in the selection of targets, in the following respects:

- o Allied bombers hit a number of food, agricultural and water-treatment facilities, including four government food warehouses in Diwaniyya, a new dairy factory north of Basra, flour-milling and grain-storage warehouses, and several water-treatment facilities in Basra. Under the customary rules of war, as reflected in Article 52 of Protocol I, these appear not to have been legitimate military targets because they were making no known contribution to the Iraqi military effort. With food shortages prevalent because of the U.N.-imposed embargo, these attacks also violated the customary principle set forth in Article 54 of Protocol I prohibiting starvation as a means of warfare.
- o Although the crippling of Iraq's electrical system impeded the Iraqi military's ability to communicate and to produce war-related goods, it also had a severe cost to the civilian population. Shortages of food due to the U.N. embargo were exacerbated by the lack of refrigeration, the impairment of Iraq's highly mechanized, irrigation-based agriculture, the crippling of the nation's electricity-dependent water-purification and sewage-treatment facilities, and the handicapping of Iraqi hospitals and clinics. The customary-law principle codified in Articles 51 and 57 of Protocol I prohibits attacks when the civilian costs are "excessive" in relation to the "concrete and direct military advantage anticipated." Allied commanders have failed to explain why such massive destruction of the electrical system, with its attendant severe dislocation for the civilian population, was not excessive under the terms of Article 57. One reason for the failure may be reflected in comments made by Pentagon officials since the war ended. They suggested that the extent of the destruction of the electrical system may not have been to achieve a "concrete and direct military advantage" but to demoralize the Iraqi civilian population

and encourage it to rise up against Saddam Hussein. Whether or not one shares the goal of overthrowing the Iraqi government, the targeting of civilians to achieve political or military ends — be it to weaken civilian morale or to induce the civilian population to overthrow its leadership — clearly violates the customary-law duty to distinguish between military targets and the civilian population, as codified in Article 51 of Protocol I, and thus undermines the principle of civilian immunity that is at the heart of the laws of war.

- o Middle East Watch took testimony from witnesses to repeated incidents in which civilian vehicles, including fully occupied passenger buses, were attacked on Iraqi highways, primarily in western Iraq, during the allied effort to locate and destroy Iraqi mobile missile launchers. Even if it is assumed that the allies did not deliberately target these civilian vehicles, the attacks appear to have been indiscriminate in that they failed to distinguish between military and civilian vehicles traveling on the highway, as required by the customary-law principle set forth in Article 48 of Protocol I. Many of the vehicles hit were Jordanian civilian oil tankers. When Jordan publicly protested these attacks, the Pentagon issued public statements stating that civilian tankers were not being targeted and suggesting that its pilots were able to distinguish these tankers from military targets. Yet tanker drivers who relied on these assurances continued to be attacked, at times by low-flying aircraft, suggesting either that pilots did not discriminate between civilian and military targets on the highways or that their senior commanders were deceptive about the pilots' ability to make such distinctions.
- o A similar lack of discrimination characterized several allied attacks on Bedouin tents in western Iraq, leaving at least forty-six civilians dead. Bedouin tents, as objects "normally dedicated to civilian purposes," are presumed to be illegitimate targets under the customary-law principle affirmed in Article 52 of Protocol I. The presumption requires that in case of doubt about whether an object is a military target pilots should refrain from attack. Pilots firing on these long black tents may have thought that they concealed Iraqi missiles or war-related materiel, but given the tents' distance from highways (mobile missile launchers are large and presumably would have had considerable difficulty traversing one hundred kilometers of undeveloped desert) and the signs of civilian life surrounding the

tents, pilots appear not to have done "everything feasible" to verify that the tents were not civilian objects, as required by the customary-law principle restated in Article 57 of Protocol I.

Needless Deaths in the Gulf War also contains extensive, detailed testimony about the loss of civilian life as a result of the allied bombing campaign, including numerous accounts of bombs and missiles that fell wide of their targets, most often bridges and telecommunications towers, by two or three hundred meters or more, resulting in civilian casualties. The report faults the allies for their apparently deliberate silence regarding the extent of civilian casualties in Iraq attributable to allied bombing. The allies maintained this silence despite substantial evidence indicating that they had the technological capacity to make detailed bomb-damage assessments when it was politically advantageous to do so. The report notes that the Iraqi government has also been inconsistent in its release of information on the number of civilian casualties, with figures varying according to whether it seemed desirable at the moment to inflate or deflate the loss of civilian life. The report concludes that the total number of civilians killed directly by allied attacks did not exceed several thousand with an upper limit of perhaps between 2,500 and 3,000 Iraqi dead. These figures do not include the substantially larger number of deaths that can be attributed to malnutrition, disease and lack of medical care caused by a combination of the U.N.-mandated embargo and the allies' destruction of Iraq's electrical system with its severe delayed effects.

Freedom of Expression and the Gulf War

Operation Desert Storm was characterized by an unprecedented institutionalization of curbs on the right of the news media to cover military operations. Reporters were required to travel in "pools" accompanied by military escorts, and to submit all dispatches for advance review by a military censor. In apparent deference to Saudi Arabia, the staging ground for allied operations, the Defense Department censored publications sent to U.S. troops in the Gulf, imposed restrictions on what they may say or write about a variety of topics, and impeded their freedom to engage in Jewish and Christian worship.

On January 10, the Fund for Free Expression, joined by six other U.S. anti-censorship organizations, wrote to Defense Secretary Richard

Cheney to express opposition to the new rules, arguing that no case had been made for the imposition of more onerous restrictions on press coverage than were in place during the entire Vietnam War, when reporters could travel freely on their own and file reports without submitting them to military censors. The letter asserted that "it is precisely in times of national crisis such as war that the freedom of the press and the public's right to know, on which our constitutional system of self-government depends, becomes most vital." No reply was ever received. The Fund also participated as *amicus curiae* in *The Nation Magazine v. U.S. Department of Defense*, a challenge to the constitutionality of the rules.

Shortly before the onset of the war, the Federal Bureau of Investigation (FBI) began to interview Arab-American individuals and organizational officials, ostensibly to gather information about possible terrorist activity in the United States. These interviews were widely criticized by Arab-American groups and by civil rights and liberties organizations, including the Fund for Free Expression, which in a January 15 letter to Attorney General Richard Thornburgh argued that "such an approach presumes the disloyalty of millions of Arab-Americans and persons of Arab origin lawfully residing in the United States, and has a chilling effect on their rights to take part in the public debate over the appropriateness of U.S. actions in the Persian Gulf."

On January 28, less than two weeks after the start of the war, the Fund for Free Expression issued a newsletter, "Freedom of Expression and the War," analyzing the Pentagon's press restrictions, its policies affecting speech and expression by military personnel, and the FBI's questioning of Arab-Americans. On February 27, the Fund issued a supplement, "Managed News, Stifled Views." Among the abuses documented by the Fund newsletters were the detention at gunpoint of reporters who attempted to leave official press pools, excessive delays in approving material that was submitted for prior security review, and excision of material that was deemed embarrassing to the military.

Border Patrol Abuses

Americas Watch and Helsinki Watch are jointly undertaking an investigation of human rights abuses by the Immigration and Naturalization Service (INS) along the U.S.-Mexican border. The report, due for release in early 1992, will address lethal and nonlethal shootings;

torture; assaults, including one incident in 1988 in which a Border Patrol agent threw a seventeen-year-old boy to the ground causing fatal injuries; and other serious abuses by Border Patrol agents. It will also examine conditions in INS detention facilities and due process violations during INS proceedings and workplace raids. One section will be devoted to the treatment of children and youth.

One of the most serious problems identified is the failure of the INS or any other government agency to investigate complaints adequately or to prosecute human rights abuses committed by INS agents. For example, the agent involved in the homicide of the seventeen-year-old boy previously had been involved in violent incidents but had not been penalized. In 1983, he killed a Mexican national under circumstances that caused the California Highway Patrol to make a *prima facie* finding of misdemeanor vehicular manslaughter, but was never prosecuted. Following the boy's death, the agent was transferred out of the state and promoted to a position involving the training of junior officers.

The report will examine criminal penalties and civil remedies available under federal and state law and will recommend steps to ensure that individual INS agents and the agency as a whole are held accountable for human rights abuses.

The International Covenant on Civil and Political Rights

In the fall, President Bush submitted the International Covenant on Civil and Political Rights, together with a series of reservations, declarations or understandings, to the Senate Foreign Relations Committee for advice and consent to ratification. The Foreign Relations Committee promptly held hearings on ratification of the treaty, which has languished in the Senate since it was first submitted by President Carter in 1977.

While Human Rights Watch supports immediate ratification, we object to many of the limiting provisions proposed by the Administration. The only reservation that we endorse would preserve the First Amendment right to freedom of speech, which provides U.S. citizens with broader protections than those in the treaty.

Our objections to the other proposed limiting provisions fall into three categories. First, while most of the civil and political rights protected by the Covenant are also protected by U.S. law, there are areas in which U.S. law is weaker than the treaty. In these areas, which include

the death penalty for persons who committed crimes before reaching age eighteen, and several procedural protections for detained juveniles and adults, the United States seeks to maintain its lower standards rather than to raise U.S. protections to the international level.

This same unwillingness to reform U.S. law when it is weaker than the protections set forth in the Covenant also is reflected in the Administration's understanding on federalism. This understanding seeks to limit federal responsibility for the conduct of state and local governments. Instead, federal oversight of these governmental agencies should be heightened both to ensure full protection within the United States and to prevent other nations with federal forms of government from using the U.S. understanding as an excuse for not adequately monitoring and sanctioning their own state and local abuses.

Second, the package of reservations, declarations and understandings demonstrates the Administration's reluctance to allow international law to be used by U.S. courts to interpret U.S. constitutional and statutory law. This reluctance is most clearly expressed in the Administration's proposed reservation limiting the meaning of cruel, inhuman or degrading treatment or punishment to that already prohibited by the Fifth, Eighth and Fourteenth Amendments to the U.S. Constitution. This reservation would impede U.S. courts from benefiting from the wisdom of courts in other countries and international tribunals that are called upon to interpret the meaning of similar prohibitions, and would deprive Americans of the benefits of evolving international understandings of such prohibitions.

Finally, the Administration's proposal that the normative provisions of the treaty be declared non-self-executing is objectionable. This proposed declaration seeks to deny domestic legal remedies to individuals who seek relief for violations of the treaty in U.S. courts. The terms of the Civil and Political Covenant are specific and could be enforced by a court of law. There is no reason for the executive branch to fear that U.S. courts will apply the human rights norms guaranteed by the treaty in a less fair way than they apply any other U.S. law. Adoption of this declaration would deprive U.S. courts of an important role in ensuring U.S. compliance with the treaty. It would deprive Americans of an avenue of redress for serious violations of internationally recognized human rights. And it would signal to other countries that U.S. ratification of the treaty is for foreign policy purposes only and is not intended to strengthen the human rights protections offered to its own people.

Participation in U.S. Civil Rights Litigation

To bring its international human rights perspective to bear on civil rights and civil liberties problems in the United States, Human Rights Watch participated in a number of amicus curiae briefs filed in U.S. courts, including:

- o *Hudson v. McMillian*. This case, which was heard by the U.S. Supreme Court on November 13 and is expected to be decided in 1992, concerns the right to be free of violent physical abuse by government officials. The court of appeals had held that Eighth Amendment guarantees against cruel and unusual punishment were not violated by the behavior of prison guards who shackled an inmate by the wrists and ankles, held him from behind, hit him repeatedly in the face — loosening his teeth, breaking his dental plate and splitting his lip — and kicking him in the buttocks, because no "significant injury" resulted. A Human Rights Watch amicus brief outlined international conventions and agreements under which such official abuse would be considered cruel and unusual punishment, and listed occasions in which the U.S. State Department, as part of its annual review of the human rights practices of other countries, has condemned similar conduct by custodial officials abroad.
- o *U.S. Department of State v. Ray*. A Human Rights Watch amicus brief filed in the U.S. Supreme Court with the Haitian Refugee Center and other organizations argued for access under the Freedom of Information Act to the names of Haitian citizens interviewed by the State Department in the course of monitoring the Haitian government's compliance with its pledge not to persecute persons returned by the United States to Haiti. The Court rejected this position in a decision on December 16.
- o *U.S. v. Alvarez Machain*. In a brief filed in the U.S. Court of Appeals for the Ninth Circuit, Human Rights Watch argued that customary international human rights law was violated by U.S. agents who kidnapped a foreign national to bring him to trial in the United States on charges of murder and torture of a U.S. drug enforcement agent. In October the Ninth Circuit ordered that Alvarez Machain be repatriated.

- o *Trajano v. Marcos*. Human Rights Watch filed a brief in the District of Hawaii opposing an effort to curtail suits for human rights abuse under the federal Alien Tort Claims Act. The suit is described at greater length in the chapter on the California Committee and the Los Angeles office.

The Right to Monitor

The United States has numerous independent, non-governmental organizations that monitor human rights and civil liberties and work to combat abuses. They include the American Civil Liberties Union (ACLU), which has a broad mandate to deal with violations of the Bill of Rights, and groups that have a more specific focus, such as the NAACP Legal Defense Fund and the NOW Legal Defense Fund. In the past these groups have relied heavily on federal court litigation to redress abuses of rights, but with the Supreme Court increasingly unreceptive to civil rights and liberties claims, they have relied more heavily on state courts and on legislative and public education campaigns. At various points in the recent history of the United States, domestic human rights monitoring organizations have been subjected to surveillance and other forms of harassment (for example, the FBI kept files on the ACLU from the early 1920s through the early 1970s), but there has been no recent indication that this remains the case. In the 1988 presidential election, then Vice President George Bush attacked his opponent, Michael Dukakis, for his membership in the ACLU, echoing the 1986 charge by then-Attorney General Edwin Meese that the ACLU was a "criminals' lobby." While these verbal attacks reflected a lack of receptivity to rights advocacy, they were not accompanied by any formal restrictions on human rights monitors or advocacy.

THE FUND FOR FREE EXPRESSION

The Fund for Free Expression is the only one of the six divisions of Human Rights Watch focused not on a region but on a theme — freedom of expression around the world and in the United States. In 1991, the

Fund expanded its program to:

- o emphasize the relationship between censorship and global social problems.
- o investigate and analyze restrictions on freedom of expression in the United States.
- o work with the regional divisions of Human Rights Watch and other organizations on freedom of expression issues around the world.
- o campaign against human rights abuses involving the academic community.

The Fund also administered a second round of grants, made possible by a legacy from writers Lillian Hellman and Dashiell Hammett, to writers around the world who have been victimized by political persecution.

Censorship and Global Problems

The Fund emphasizes the connection between freedom of expression and global social problems such as AIDS, famine and environmental degradation to establish that censorship and information policies are important elements in the debate about these issues. The first such global study, *Off Limits: Censorship and Corruption*, was published in July. It documents the extent to which a taboo topic for the press in many countries is the wealth accumulated by heads of state — and their families and associates — during their terms in office. Corrupt regimes resort to censorship about their own self-enrichment because they realize that their very maintenance in office is at stake: widespread anger over revelations of corruption played a major role in the downfall of the regime of Erich Honecker in East Germany and the Tiananmen Square uprising in China. The report examines the means by which information is kept from public scrutiny through case studies of six countries around the world, including the bribery of government critics in Zaire, a climate of self-censorship in Paraguay, and expulsions of foreign correspondents in Indonesia.

In the first half of 1992, the Fund will publish two other thematic reports. One concerns the censorship of minority languages around the

world — including the movement to establish English as the official language of the United States. The other, undertaken in cooperation with the Natural Resources Defense Council, will be a series of case studies on the persecution and harassment of individuals and organizations working to protect the environment in a number of countries.

Freedom of Expression and the Gulf War

The Fund played an important role in documenting, analyzing and challenging restrictions on freedom of expression imposed in connection with the war in the Persian Gulf. The U.S. Defense Department imposed severe curbs on the right of the news media to cover military operations. Reporters were required to travel in "pools" accompanied by military escorts, and to submit all dispatches for advance review by a military censor. In apparent deference to Saudi Arabia, the staging ground for allied operations, the Pentagon censored publications sent to U.S. troops in the Gulf, limited what they could say or write about a variety of topics, and impeded their freedom to engage in Jewish and Christian worship.

On January 10, the Fund, joined by six other U.S. anti-censorship organizations, wrote to Defense Secretary Richard Cheney to express opposition to the new rules, arguing that no case had been made for the imposition of more onerous restrictions than were in place during the entire Vietnam War, when reporters could travel freely on their own and file reports without submitting them to military censors. The letter asserted that "it is precisely in times of national crisis such as war that the freedom of the press and the public's right to know, on which our constitutional system of self-government depends, becomes most vital." The Fund also participated as *amicus curiae* in the lawsuit *The Nation Magazine v. U.S. Department of Defense*, a challenge to the constitutionality of these rules.

Shortly before the onset of the war, the Federal Bureau of Investigation (FBI) began to interview Arab-American individuals and organizational officials, ostensibly to gather information about possible terrorist activity in the United States. These interviews were widely criticized by Arab-American groups and civil rights and liberties organizations, including the Fund, which in a January 15 letter to Attorney General Richard Thornburgh argued that "such an approach presumes the disloyalty of millions of Arab-Americans and persons of Arab origin lawfully residing in the United States, and has a chilling effect

on their rights to take part in the public debate over the appropriateness of U.S. actions in the Persian Gulf."

On January 28, less than two weeks after the start of the war, the Fund issued a newsletter, "Freedom of Expression and the War," which analyzed the Pentagon's press restrictions and policies affecting speech and expression by military personnel, and the FBI's questioning of Arab-Americans. On February 27, the Fund issued a supplement, "Managed News, Stifled Views." Among the abuses documented by the Fund newsletters were the detention at gunpoint of reporters who attempted to leave the official press pools and excessive delays in approving material submitted for prior security reviews or excision of material that was embarrassing to the military.

The Fund also criticized other governments for managing the news to maintain or manufacture consensus for their role in the war. Iraq imposed government escorts on foreign correspondents, and censors monitored and screened their reports before transmission. No foreign journalist was permitted to visit Kuwait from the August 2 invasion until after the cease-fire. Saudi Arabia banned or censored all foreign publications, with particular attention to articles that mentioned civilian bombing casualties or were deemed to favor the Palestine Liberation Organization. Egypt, Morocco and Turkey — the other principal U.S. allies in the region which backed the coalition's war effort in the face of substantial popular opposition — moved to disguise the extent of their role and to quash dissent.

Turkish state television, for example, used much of CNN's material on the war, but when the coverage turned to such matters as U.S. strikes at Iraq from Turkish bases or the shortage of gas masks in Turkey, programming was interrupted for a "commercial break" or footage of a scenic waterfall. Raids from Turkish air bases were never mentioned in any official statement or on state television or radio.

The Egyptian Organization for Human Rights reported that as many as two hundred political activists and students were detained in Egypt. Israel closed press offices in its occupied territories and arrested the Palestinian writer and peace activist Sari Nusseibeh on "spying" charges which were widely believed to be spurious. Fearing mass protests, King Hassan of Morocco ordered sports events canceled and schools closed, and threatened agitators with trials by military tribunals. The newest U.S. ally, Syria, detained eighty writers and intellectuals for expressing support for Iraq.

In Great Britain, the British Broadcasting Corporation (BBC) blocked a documentary on the export to Iraq of British-built superguns, on the grounds that the "tone is wrong." France banned the distribution, publication or sale of three publications deemed pro-Iraq, on the grounds that they "defend interests that are contrary to France's interests" concerning the war, and expelled one of the editors. The Australian Broadcasting Corporation faced a government inquiry following complaints from Prime Minister Bob Hawke about its war coverage.

Virtually every country with a significant Muslim population, whether or not it was a party to the Gulf War, cracked down on dissent. Anti-war demonstrations were banned in Djibouti and Sri Lanka, and peaceful protesters were met with police violence in Nigeria and Pakistan. Tunisia and Algeria went one step further and expelled foreign reporters who had arrived to cover anti-war protests.

U.S. Free Expression Issues

As a U.S.-based free speech group which is a component of an international human rights organization, the Fund attempts to bring a worldwide perspective to bear on American civil liberties issues. For example, a newsletter issued in June, "Secret Trials in America?," compared the Bush Administration's proposal for secret courts to try suspected alien "terrorists" with similar provisions in other countries criticized by the State Department in its annual human rights report.

The Fund also issued several other reports on U.S. free expression issues:

- o In September, "SLAPPING Down Critics" documented the use of harassment libel suits and tort actions to intimidate community and public interest organizations.
- o In October, "The Supreme Court and Free Speech" analyzed the erosion of free speech protection in two important decisions of the Court's 1990-91 term: *Barnes v. Glen Theatre*, in which the Court cited public order and morality concerns to justify a state's ban on expressive activity (in this case, nude dancing); and *Rust v. Sullivan*, in which the Court upheld a federal regulation barring government-funded family-planning clinics from mentioning the availability of abortion as an option.

- o In December, "Muzzling Student Journalists" documented the rise in censorship of the student press since the Supreme Court's 1988 decision in *Hazelwood v. Kuhlmeier*, which permitted school administrations to restrict student speech on the basis of "legitimate pedagogical concerns."

The Fund participated in a coalition of groups working to overturn the "gag rule" on abortion advice in federally funded family planning clinics. In May, continuing its long-standing concern with protecting "free trade in ideas," the Fund joined Helsinki Watch in writing to Congress on behalf of legislation to remove from the Immigration and Naturalization Service's "lookout list" persons who were listed solely because of their political beliefs.

Joint Projects with Regional Divisions of Human Rights Watch and Other Groups

The Fund expanded its work with the regional divisions of Human Rights Watch on certain reports and projects relating to freedom of expression. In October, the Fund joined Helsinki Watch in releasing *Restricted Subjects: Freedom of Expression in the United Kingdom*. In November, the Fund joined Africa Watch and the PEN American Center in sponsoring a panel discussion, "Challenging the Politics of Despair: Writers and Human Rights in Africa." The Fund and Africa Watch are preparing, for publication in 1992, a major report documenting limits on literary freedom in Africa. Also in November, with the International Freedom to Publish Committee of the Association of American Publishers, the Fund issued a newsletter, "The Threat Against Salman Rushdie: 1,000 Days Later." With Americas Watch, the Fund is preparing a report documenting limits on freedom of expression in Miami's Cuban exile community.

Committee for International Academic Freedom

The Fund organized and launched a new committee of Human Rights Watch, the Committee for International Academic Freedom, to protest human rights abuses involving academics. In contrast to writers, journalists, scientists, physicians and other professional disciplines,

teachers and scholars lack a group to focus on their human rights problems. Yet, educators are heavily represented among the world's political detainees, and universities are at special risk from most repressive regimes. The Committee for International Academic Freedom will send letters and cables of concern to governments on behalf of imprisoned or harassed academics, and oppose censorship and the closing of universities for political reasons. Four university presidents — Jonathan Fanton of the New School for Social Research, Vartan Gregorian of Brown University, Hanna Holborn Gray of the University of Chicago, and Charles Young of the University of California at Los Angeles — took the lead in forming this new group. In addition to providing support for endangered scholars in other countries, the committee will keep the U.S. academic community informed about human rights abuses against their peers, and encourage academics to take a greater role in defending the rights of their colleagues worldwide. Among the subjects of the committee's first protests were police attacks on peaceful student demonstrators in Zimbabwe, the firing of four academics and the detention of two student leaders in Tanzania, and the extrajudicial execution of two architecture students in Guatemala.

Hellman/Hammett Grants to Persecuted Writers

The Fund also administers grants to writers in financial need as a result of political persecution, under the terms of legacies from the writers Lillian Hellman and Dashiell Hammett. In 1991, the second year of this program, twenty-one grants — generally of \$10,000 each — were made. Among the recipients were Alaa Hamed, an Egyptian novelist facing blasphemy charges; Petre Mihai Bacanu, a Romanian editor sentenced to prison by the regime of Nicolae Ceaucescu and harassed under the new government; Byron Barrera Ortiz, a Guatemalan journalist forced to flee the country after a death squad wounded him and killed his wife; and Zargana, a Burmese satirist serving a five-year prison term for his political commentary. Grants were also made to writers from Argentina, China (3), Iran, Liberia, Malawi, Peru, Sri Lanka, South Africa, Togo, Turkey (2), the United States (3) and Vietnam. In addition to these annual grants, for which nominations are solicited in the fall and decisions announced early in the following year, smaller amounts are available from a special emergency fund.

THE PRISON PROJECT

The Prison Project of Human Rights Watch was formed in 1988 to focus international attention on prison conditions worldwide. Its work cuts across the five regional divisions of the organization. The project investigates conditions for sentenced prisoners, pretrial detainees, and those held in police lock-ups. It examines conditions for all prisoners, without limiting its work to prisoners held for political reasons.

In addition to pressing for improvement in prison conditions in particular countries that are studied, the project seeks to place the problem of prison conditions on the international human rights agenda. We believe that a government's claim to respect human rights should be assessed in part on the basis of how it treats its prison population. Our experience so far has shown that a number of democratic countries that are rarely or never a focus of human rights investigations are in fact guilty of serious human rights violations within their prisons.

In previous years, the project conducted studies in Brazil, Czechoslovakia, India, Indonesia, Israel and the Occupied Territories, Jamaica, Mexico, Poland and Turkey. In 1991, studies were conducted in Puerto Rico, Romania, Spain, the Soviet Union, the United Kingdom and the United States. Reports were published on India, Israel and the Occupied Territories, Mexico, the Soviet Union and the United States. Updates were also published on prison conditions in Poland and Czechoslovakia following political transformations in those countries, and a newsletter was issued on Puerto Rico.

In an effort calling for increased attention to prison conditions within the thirty-eight-nation Conference on Security and Cooperation in Europe (CSCE), the Prison Project prepared a document outlining its findings on prison conditions in seven CSCE countries, which was released at the opening of the September CSCE human rights conference in Moscow. Findings from prison studies were also included in a report on human rights in various Commonwealth countries presented by Human Rights Watch during the Commonwealth Heads of Government Conference, which was held in Zimbabwe in October. The Prison Project was also invited to present a paper on prison conditions in Puerto Rico to a May conference in Trinidad organized by Caribbean Rights and Prison Reform International.

The Prison Project was successful in generating press attention in several of the countries where it investigated prison conditions, including major articles in *The New York Times*, *The Washington Post* and *The Los Angeles Times* following the November publication of the report on the United States.

Of the countries where investigations have been undertaken, the Prison Project has been able to secure access to penal institutions in more than half. The project has a self-imposed set of rules for prison visits: the investigators undertake visits only when they and not the authorities can suggest institutions to be visited, when they can be confident that they will be allowed to talk privately with inmates of their choice, and when they can gain access to the entire facility. These rules are adopted to avoid being shown model institutions or their most presentable parts. When no access is possible, reporting is based on interviews with former prisoners, prisoners on furloughs, relatives of inmates, lawyers, prison experts and prison staff, and on documentary evidence. Prison investigations are usually conducted by teams composed of a staff member and a member of the Prison Advisory Committee, which guides the work of the project. Occasionally, the project invites an outside expert to participate in a particular investigation.

The Prison Advisory Committee is chaired by Herman Schwartz, of the American University Law School. Other members are Nan Aron, Vivian Berger, Haywood Burns, Alejandro Garro, William Hellerstein, Edward Koren, Sheldon Krantz, Benjamin Malcolm, Diane Orentlicher, Norman Rosenberg, David Rothman and Clarence Sundram. The director of the project is Joanna Weschler. Lamia Matta is the associate.

WOMEN'S RIGHTS PROJECT

The Women's Rights Project was established in 1990 to work in conjunction with Human Rights Watch's five regional divisions to monitor violence against women and discrimination on the basis of gender worldwide. The Project grew out of Human Rights Watch's recognition of the epidemic proportions of violence and gender discrimination around the world and of the past failure of human rights organizations to hold governments accountable for abuse of women's

basic human rights.

The Project monitors the performance of specific countries in securing women's human rights, highlights individual cases with international significance, and serves as a link between the women's rights and human rights communities at both a domestic and international level.

In 1991, the Women's Rights Project undertook investigations in two countries. The first mission, in collaboration with Americas Watch, documented violence against women in the home in Brazil and the failure of the Brazilian government to prosecute such abuse and guarantee its female citizens equal protection of the law. The report of that mission, *Criminal Injustice: Violence Against Women in Brazil*, was released in November.

The report found that it is still possible for a man to kill his wife in Brazil and be acquitted by the courts on the grounds of honor. It also found that while reports of domestic violence greatly increased as a result of the creation of police stations specifically designed to address crimes of violence against women, efforts to impose criminal penalties for such abuse remain woefully inadequate. Of over two thousand cases of violence against women reported to the main women's police station in Rio de Janeiro in 1991, none resulted in punishment of the accused. The report called on the Brazilian government to apply the law fully and fairly in Brazil, to disavow publicly the honor defense, and to train both the police and judges in the importance of applying criminal sanctions to domestic abuse.¹

In November, the Women's Rights Project, together with Asia Watch, traveled to Pakistan to investigate violence against women in police custody and the role of gender discrimination in the incarceration of women. The delegation found that over seventy percent of women in police custody report sexual abuse by police officials. It investigated several cases of rape and sexual torture of women by police officials and found no case that had resulted in criminal penalties for the accused officers. Basic protections — including requirements that all detainees are charged with a specific crime and are produced before a magistrate within twenty-four hours and that women detainees are interrogated in the presence of a female officer — are routinely violated.

¹ For more on the report, see the above chapter on Brazil.

The delegation found that over sixty percent of women in Pakistani jails are there for offenses under the Hudood Ordinances, which were introduced by General Zia ul-Haq in 1979 as part of an "Islamization" campaign designed to consolidate his support from an increasingly powerful fundamentalist minority. The ordinances enforce punishments for adultery, fornication and rape; all three crimes are defined as "sexual intercourse outside of marriage," with rape requiring the added element of a lack of consent.

Women are often imprisoned in Pakistan because they were unable to prove a rape charge (lack of consent) and were thus themselves charged with adultery or fornication. This bizarre transformation occurs largely because evidentiary laws are explicitly biased against women and, in the absence of evidence other than the female victim's own testimony, male defendants find it easy to deny the charge. In such cases medical reports introduced by the victim in support of her rape charge (pregnancy or signs of forced penetration) are often used against her to prove that impermissible sex occurred. As no such medical evidence exists regarding the accused rapist, he is often released for lack of evidence while female rape victims are charged with fornication or adultery and sent to prison pending trial.

The delegation also found increasing numbers of Bangladeshi women in Pakistani jails. According to a recent nationwide survey in Pakistan, some 150 to 200 Bengali women are brought by traffickers each month from Bangladesh to Pakistan. These women are often lured across the border by promises of work and find themselves forcibly sold into prostitution or domestic servitude. If discovered by the police, they are arrested as illegal immigrants and imprisoned. The survey estimated that 1,400 Bangladeshi women are currently in Pakistani jails.

The delegation's report on the mission to Pakistan is scheduled for release in early 1992.

In addition to these completed missions, the Women's Rights Project is working with Helsinki Watch on two additional reports on women's rights in Czechoslovakia and Poland and with Middle East Watch on gender discrimination under the Family Code in Algeria.

The Women's Rights Project also has begun to investigate individual cases of international significance. The Project's first effort in this area involved a collaboration with Middle East Watch to protest the closing by the Egyptian government of the Arab Women's Solidarity Association (AWSA). The Egyptian authorities closed the Association, known in Egypt and worldwide for its work on women's rights, without warning or

justification. The legality of the closing is being challenged by AWSA in court. The Women's Rights Project together with Middle East Watch and the Urban Morgan Institute for Human Rights of the University of Cincinnati College of Law filed an *amicus curiae* brief protesting the closing on the grounds that it violated international guarantees of freedom of expression and association.

Another important objective of the Women's Rights Project's is to build ties between domestic and international human rights and women's rights groups to raise the visibility of violence against women and discrimination on the basis of gender as human rights violations, and to strengthen the mechanisms for making governments accountable for such practices. In addition to the Project's field work, which often involves linking women's and human rights groups, the Project has participated in and sponsored several meetings designed to bring the women's rights and human rights communities together. For example, in November 1991, the Women's Rights Project hosted a meeting between international women's rights monitors and representatives of several international human rights organizations as a step toward improved collaboration in the future. The report from this meeting was released in December.

The Women's Rights Project is directed by Dorothy Thomas and staffed by Dionne Morris. For the academic year 1991-1992, Michele Beasley, having received a Women, Law and Public Policy Fellowship from the Georgetown University Law Center, has joined the Project as staff attorney. The Women's Rights Project is based in Human Rights Watch's Washington office.

THE CALIFORNIA COMMITTEE AND THE LOS ANGELES OFFICE

Nineteen ninety-one was the second full year of operation for the Los Angeles office of Human Rights Watch. The office opened in May 1989 to complement the work of the California Committee of Human Rights Watch — a group of concerned Californians who actively promote and participate in our work. The Los Angeles office is responsible for the

research on Mexico and the U.S.-Mexican border area performed by Americas Watch. The office also sponsors educational programs on international human rights in Los Angeles and San Francisco, and is available to carry out research and campaign tasks for all components of Human Rights Watch.

Research on Mexico continued to be the cornerstone of the Los Angeles office's work in 1991. Two reports were produced: *Prison Conditions in Mexico* and *Unceasing Abuses: Human Rights in Mexico One Year After the Introduction of Reforms*. Both received substantial press coverage in Mexico and contributed to prodding the Mexican government to intensify human rights reforms. In March, the office prepared testimony on human rights in Mexico which was presented to the Senate Subcommittee on Western Hemisphere Affairs. In October, a representative from the office spoke at the U.S.-Mexico Center of the University of California at San Diego on human rights in Mexico one year after the introduction of reforms. Also in October, an office representative addressed the newly formed Mexican National Association of Democratic Lawyers about documenting human rights abuses.

During 1991 Human Rights Watch, through the Los Angeles office, joined the American Civil Liberties Union of Southern California in litigation against the estate of Ferdinand Marcos on behalf of three victims of human rights abuses in the Philippines during his presidency. The cases are precedent-setting because they are the first human rights cases under the Alien Tort Claims Act that are scheduled to go to trial on their merits.

The Los Angeles office helped to prepare briefs for and participated in key hearings on the case in January, July and October. In April, Human Rights Watch participated in depositions in New York of Imelda Marcos and her son Ferdinand Romauldez Marcos. In May, an office representative traveled to Manila for three weeks to gather evidence for the litigation. In October, Human Rights Watch, under the direction of the Los Angeles office, filed an *amicus curiae* brief in *Trajano v. Marcos*; a parallel case to *Sison v. Marcos*. The brief challenged an attempt to limit the scope of the Alien Tort Claims Act to prevent damage suits for gross abuses committed abroad.

Research continued on abuses by the U.S. Border Patrol and by other agencies of the Immigration and Naturalization Service (INS) during the arrest and detention of undocumented aliens in the United States. A report is scheduled for release in early 1992.

During its research on INS abuses, the office learned of a case in which Border Patrol agents used torture to elicit information from two Guatemalan men who had entered the United States without inspection. According to the men, Border Patrol agents in Falfurrias, Texas used a cattle prod on one of them and threatened to rape him with it; both men were severely beaten. Through the efforts of the Los Angeles office, Human Rights Watch has joined Texas Rural Legal Aid (TRLA) in representing the men. TRLA will handle their lawsuit against the individual agents, while Human Rights Watch, in cooperation with volunteer attorneys in Texas, will assume responsibility for their Federal Tort Claims Act proceedings against the INS.

The Los Angeles office filed Freedom of Information Act requests on behalf of Antonio Valenzia Fontes, a Mexican lawyer, and four others who were detained, tortured and held incommunicado for five days before being officially "arrested" on trumped-up drug charges. The five men allege that U.S. law enforcement agents were present during their torture, and that in two cases, the torture was stopped to allow the U.S. agents to interrogate the men, and then resumed.²

In February, the Los Angeles office prepared a memorandum on freedom of expression during political campaigns. The research was incorporated into a letter from Helsinki Watch calling on the Polish Helsinki Committee to withdraw its support for the prosecution of losing presidential candidate Stanislaw Tyminski. Tyminski was charged with "publicly insulting, ridiculing and deriding the Polish Nation" under laws that dated from Poland's repressive past.

During June and July, several members of the California Committee participated in visits to four jails and prisons in Southern California and contributed to the Human Rights Watch Prison Project's comprehensive nationwide report, *Prison Conditions in the United States*.

In September, a California Committee member served as a public member of the U.S. delegation to the Moscow meeting of the Conference on the Human Dimension, part of the Conference on Security and Cooperation in Europe. In addition to working to promote human rights through the U.S. delegation, she participated in independent activities organized by Helsinki Watch in Moscow at the time.

As part of its public education program, the California Committee and Los Angeles office helped to organize several well attended events.

² For more on this case, see the above chapter on Mexico.

In January, Fang Lizhi, China's most prominent astrophysicist and outspoken human rights activist, was our guest for a series of public and private meetings in Los Angeles and San Francisco. In April, Andrew Whitley, just back from a fact-finding mission to Kuwait, made presentations in both cities. In May, Holly Burkhalter spoke to members of the California Committee on Human Rights Watch's work in Washington. In October, Jose Zalaquet, a distinguished lawyer and longtime human rights activist from Chile, and Juan Méndez, executive director of Americas Watch, addressed a small gathering in San Francisco. Aryeh Neier, executive director of Human Rights Watch, was the featured speaker at the California Committee's November annual meeting.

Jane Olson and Stanley Sheinbaum are co-chairs of the California Committee. Its Executive Committee includes Raquel Ackerman, Mike Farrell, Paul Hoffman, Joseph and Donna LaBonte, Daniel Levy, Lynda Palevsky, Lucille Polachek, Clara A. "Zazi" Pope, Hon. Phillip R. Trimble, Francis Wheat and Diane Wittenberg. The remainder of the California Committee is composed of Lynn Alvarez, Edward Asner, Geoffrey Cowen, Dolores A. Donovan, Sandy Elster, Brenda Freiberg, Jonathan M. Gordon, Arthur N. Greenberg, Kristin Hubbard, Lucy Hubbard, Rosanne Keynan, Clifford L. Klein, Abraham F. Lowenthal, Beatriz Manz, Felicia Marcus, Hon. Dorothy W. Neslon, Hon. James F. Nelson, Steven A. Nissen, Claire Pollack, Cruz Reynoso, David W. Rintels, Vicki Riskin Rintels, Ramona Ripston, William Rothbard, Orville Schell, Pippa Scott, Nancy Wheat, Stanley Wolpert and Zohreh Zarnegar.

Ellen L. Lutz is the California director of Human Rights Watch and heads the Los Angeles office. Jean Hessburg is the outreach coordinator and Colleen Rafferty is an associate. Eugene Chao and Rudy Guyon were full-time law-student interns who assisted with *Sison v. Marcos* and other projects. Ivan Arrellanes is a research intern who assists with work on Mexico.

CONGRESSIONAL CASEWORK

Human Rights Watch continued to work closely with two casework groups composed of members of Congress — the Congressional Friends of Human Rights Monitors and the Congressional Committee to Support

Writers and Journalists. Both groups are bipartisan and bicameral. Human Rights Watch initiated the formation of these groups to enable concerned members of Congress to write letters and urgent cables to governments that violate the basic rights of human rights monitors, writers and journalists. Human Rights Watch supplies the groups with information about appropriate cases of concern; the groups, in turn, determine which cases they would like to act upon.

The goals of the congressional casework groups are three-fold. Most important, their letters and cables help to pressure governments to end the persecution of human rights monitors, journalists and writers. Second, the material submitted by Human Rights Watch informs the members of the groups about such persecution. Finally, copies of letters and cables are sent to U.S. ambassadors in the relevant countries to inform them about cases of concern to the congressional members.

The Congressional Friends of Human Rights Monitors, which was formed in 1983, is composed of thirty-seven senators and 144 representatives. The five members of the steering committee for the group are Senators Dave Durenberger, James Jeffords and Daniel Patrick Moynihan, and Representatives Tony Hall and Constance Morella.

In 1991, the committee took up the cases of dozens of human rights monitors who had been killed, disappeared, arrested arbitrarily, assaulted or harassed. Among these cases were: the murder or disappearance of several human rights activists in Guatemala; the assault on Philippine human rights lawyer Vidal Tombo; the murder of Marco Tulio Hernández, a human rights activist in Honduras; the arbitrary arrest of human rights lawyer Paul Muite of Kenya; the arrest and harassment of Cuban human rights monitors; the detention of Dr. Nguyen Dan Que, a Vietnamese human rights activist; the murder of Colombian human rights monitor Alcides Castrillon and death threats against other Colombian monitors; and the murder of South African human rights lawyer Bheki Mlangeni.

The Congressional Committee to Support Writers and Journalists was formed in 1988 and is composed of nineteen senators and eighty-five representatives. In 1991, the members of the steering committee for the group were Senators Bob Graham and Mark Hatfield, and Representatives Bill Green and John Lewis.

During the year, the committee denounced attacks against individual journalists and writers, as well as acts of censorship. Among these cases were: the arrests in March and November of Kenyan editor Gitobu Imanyara and the arrest and intimidation of several other Kenyan

journalists; the temporary disappearance of a CBS news crew and a British film crew and the murder of photographer Gad Schuster Gross in Iraq; attacks against the independent press in Cameroon; the murder of Colombian journalist Julio Daniel Chaparro Hurtado and photographer Jorge Enrique Torres Navas; the Salvadoran military's harassment of foreign journalists; the arrest and mistreatment of Palestinian journalist Taher Shritah in Israel; the murder of Philippine journalist Nesino Paulin Toling; the sentencing of South African journalist Patrick Lawrence; and the harassment of journalists working for the newspaper *al Fajr* in Tunisia.

FINANCES

Human Rights Watch is an independent, nongovernmental organization. To maintain that independence, Human Rights Watch does not accept funds from any government or government-funded agency. It supports its activities entirely through grants from private foundations and contributions from private individuals and corporations.

HUMAN RIGHTS WATCH MISSIONS IN 1991

Africa Watch

February	Senegal	to interview Mauritanian refugees
	Nigeria	to conduct general research on human rights conditions
	Kenya	to meet with government officials and human rights activists
March	Nigeria	to attend a session of the African Commission on Human and People's Rights
June-August	South Africa	to conduct research on conditions in Ciskei and Bophuthatswana
August	Liberia/Ivory Coast	to research human rights conditions since the November 1990 cease-fire and to interview Liberian refugees
October	Zimbabwe	to attend meeting of African nongovernmental organizations from Commonwealth countries, to attend the Summit of Commonwealth Heads of State, and to research general human rights conditions
	Ethiopia	to meet with government officials to discuss mechanisms for the protection of human rights since the new government came to power
November	Belgium	to interview refugees from Burundi and Rwanda and to meet with representatives of the European Economic Community and European

	Rwanda	Parliament to research human rights conditions since the outbreak of the war
	France	to interview Mauritanian refugees and to meet with journalists, academics, activists and others knowledgeable about French human rights policy toward Africa
December	Somalia	to investigate landmines in Northern Somalia

Americas Watch

January	Guatemala	to conduct exhumations in San Antonio Sinaché and fact- finding in Santiago Atitlán (with Physicians for Human Rights)
January- February	El Salvador	to conduct fact-finding for March report, <i>The Challenge of Reform</i>
	Mexico	to investigate violence along the United States-Mexico border
February	Argentina	to gather facts pertaining to the issues of truth and justice
	Dominican Republic	to conduct follow-up investigations of the use of forced labor on state-run sugar plantations (with National Coalition for Haitian Refugees and Caribbean Rights)
	Mexico	to meet with government officials, human rights activists and victims, labor leaders and others in Mexico City, and to investigate the December 1990

	Panama	police killing of six civilians in Angostura, Sinaloa
	Paraguay	to investigate developments affecting the rule of law since the Endara administration came into office following the December 1990 U.S. invasion
March	Puerto Rico	to present "New Outbursts of Violence in Land Disputes," and to meet with government officials
March-April	Nicaragua	to investigate prison conditions (Human Rights Watch Prison Project)
April	Brazil	to conduct fieldwork on political violence and the condition of demobilized <i>contra</i> fighters
	Cuba	to investigate violence against women (HRW's Women's Rights Project)
	Haiti	to investigate violations of freedom of expression and general human rights issues
	Suriname	to investigate the administration of justice and participate in a Caribbean Rights conference
May	Colombia	to investigate human rights conditions in light of the December 1990 coup and assess conditions in advance of the May elections
	Peru	to present the Spanish-language version of <i>The Drug War in Colombia</i> and to investigate general conditions
		to conduct fact-finding on counterinsurgency policy and related abuses.

May	Uruguay	to investigate general conditions and the case of the identification of child who had been kidnapped from his "disappeared" mother
May-June	Nicaragua	to prepare July report, <i>Fitful Peace</i>
July	Argentina	to investigate police killings and torture
	Chile	to present <i>Human Rights and the "Politics of Agreements"</i>
	Dominican Republic	to investigate the mass forced deportation of Haitians and Dominico-Haitians (with National Coalition for Haitian Refugees and Caribbean Rights)
	Ecuador	to investigate general conditions, especially the issue of violence in rural areas related to land conflicts
	Guatemala	to present the Chunimá case before the Inter-American Court of Human Rights in San José, Costa Rica
	Nicaragua Peru	to present <i>Fitful Peace</i> to meet with government officials, journalists and human rights activists
August	Brazil	to present the Portuguese version of <i>Rural Violence in Brazil</i> , meet with government officials, and investigate police violence in São Paulo
	El Salvador	to examine the peace process and the effect of the U.N. presence
	Mexico	to investigate the murder of journalist Víctor Oropeza in Chihuahua

August- September, November, December	Guatemala	to investigate conditions of displaced villagers in northern Quiché organized as the Communities of Population in Resistance
September	El Salvador	to observe the trial of military personnel in the Jesuit killings
October	Colombia	to investigate general conditions
	Honduras	to meet with government officials, human rights activists and attorneys
	Mexico	to participate in a conference on human rights documentation by the newly formed National Democratic Lawyers Association
November	Brazil	to investigate violence employed by the police in Rio de Janeiro
	Nicaragua	to investigate general conditions
November- December	Brazil	to investigate rural violence
December	Haiti	to investigate violations since the September coup d'etat (with National Coalition for Haitian Refugees)
	Peru	to participate in a hearing before the Inter-American Court of Human Rights in San José, Costa Rica, on the <i>Frantón</i> case
Asia Watch		
February	Japan	to meet with government officials, nongovernmental organizations, representatives of the business community and

April	Cambodia/ Thailand	others to discuss Japan's domestic and foreign human rights policies. to interview soldiers, doctors, relief workers and victims on the use of land mines in Cambodia (with Physicians For Human Rights)
May-June	Indonesia/ Malaysia Australia	to investigate reports of serious human rights violations in Aceh and the situation of Acehnese refugees in Malaysia to meet with Australian officials to discuss human rights in Indonesia
July	China	to collect research materials and investigate general conditions
November	Pakistan	to investigate violence against women in police custody and the role of gender discrimination as a reason for women's incarceration (with the Human Rights Watch Women's Rights Project)
December	Burma/China Indonesia Sri Lanka	to investigate human rights conditions on the Sino-Burmese border to conduct investigations into the massacre of civilian protestors by government troops in East Timor to investigate general conditions, including abuses by all sides and issues of accountability

Helsinki Watch

January	Northern Ireland	to research human rights violations by both sides
January-February	Baltics	to meet with government officials and eyewitnesses in Estonia, Latvia and Lithuania while investigating the January 1991 violence in the Baltics
February-March	Romania	to do a follow-up investigation of the June 1990 events and take a further look into the problems of the Romanian Gypsies
February-April	Yugoslavia	to investigate the demonstrations in Belgrade in March and the situation of the Serbs in Croatia
March	Soviet Union	to investigate general conditions in Moldavia
	Albania	to investigate general conditions and meet with Albanian authorities (Part of an International Helsinki Federation delegation)
March-April	Bulgaria	to continue research on the situation of the Gypsies
April	United States	to visit three federal prisons in Pennsylvania as part of an investigation of U.S. prison conditions. (Human Rights Watch Prisons Project)
April-May	Romania	to continue the Gypsy project
May-June	Yugoslavia	to research freedom of the press in Serbia, Kosovo, Vojvodina, Croatia, Macedonia, Montenegro, Bosnia-Herzegovina and Slovenia, and to investigate the deaths of seventeen people after recent

May-July	Soviet Union	interethnic violence in Vukovar to attend a minority rights conference in Leningrad; to interview Armenian officials, refugees from Azerbaidzhan, Azerbaidzhani officials and refugees from Armenia in Armenia and Azerbaidzhan; to make contacts in Turkmenia; and to do follow up work in Tadzhikistan on Helsinki Watch's report on Tadzhikistan
June	Soviet Union	to research conditions in Soviet pretrial prisons, labor camps and other penal facilities by visiting twenty-one facilities in all and interviewing current and former prisoners, prison officials, defense attorneys, procurators and prison rights activists
July	Soviet Union	to research the "punished peoples," those who had been deported under Stalin
	Romania	to complete the Gypsy report and investigate suspicious beatings of journalists and writers
July-September	Yugoslavia	to investigate ethnic tensions and army abuses in Croatia and Slovenia
August	Germany	to do preliminary research for a report on treatment of the Gypsy population
August-September	Soviet Union	to interview Azerbaidzhani and Kurdish refugees in Baku and to establish contacts with government officials and human rights activists in Georgia

September	Soviet Union	to attend the CSCE Meeting in Moscow and run independent seminars, on eight incidents of the unjustified use of force by the Soviet government against civilians, and the current plight of ethnic minorities deported under Stalin
October	Albania	to investigate general conditions
	Germany	to research human rights conditions of Gypsies in Germany
October-November	Romania	to investigate prison conditions
November	Romania/ Greece	to do follow up work on the treatment of the Turks in Western Thrace
	Turkey	to investigate reports of torture of children in detention
	Soviet Union	to set up the Helsinki Watch office in Moscow, and to observe the situation of the South Ossetians in North Ossetia and Georgia
November-December		

Middle East Watch

February-March	Jordan	to interview foreign nationals fleeing Iraq
March	Kuwait	to investigate the Iraqi record in occupied Kuwait and post-liberation abuses against non-Kuwaitis
April-May	Iran	to investigate Iraqi human rights abuses against Kurds and to determine the extent of the refugee crisis
May	London	to interview Kurdish refugees

May-June	Kuwait	to observe collaborator trials and to research continuing post-liberation abuses
June	Israel	to investigate Iraqi missile attacks on Israel during the Gulf war
September	Paris	to meet with Iranian human rights activists and exiled Kurds
September	Iran	to attend human rights conference and to meet with government officials concerning current human rights policies
October-November	Madrid	to attend Middle East Peace Conference to lobby participants to include human rights on the agenda
December	Iraq	to examine mass graves in northern Iraq (with Physicians for Human Rights)

PUBLICATIONS FROM HUMAN RIGHTS WATCH IN 1991³

Africa Watch

Academic Freedom and Human Rights Abuses in Africa, April

Angola

"Civilians Devastated by 15 Year War," February

Angola: Violations of the Laws of War by Both Sides, April

Cameroon

"Attacks Against Independent Press," February

Ethiopia

"Mengistu's Empty 'Democracy'-One Year After Reform Is Announced,
No Improvements in Civil and Political Rights," March

"Human Rights Crisis as Central Power Crumbles-Killings, Detentions,
Forcible Conscription and Obstruction of Relief," April

Ethiopia: Evil Days - 30 Years of War and Famine in Ethiopia, September

Ghana

"Government Denies Existence of Political Prisoners; Minister Says
Detainees 'Safer' in Custody," August

Kenya

Kenya: Taking Liberties, August

Liberia

"The Cycle of Abuse-Human Rights Violations Since the November
Cease-Fire," October

Malawi

"Government Releases Many Political Prisoners-Jack Mapanje and
Others Still Held," April

³ Book-length reports are listed in *italics*; shorter newsletters are in roman-type.

Mauritania

"More Than 200 Black Political Detainees Executed or Tortured to Death," May

Mozambique

"New Constitution Protects Basic Rights But Political Prisoners Still Suffer Unfair Trials," February

Nigeria

"Behind the Wall - The Civil Liberties Organisation Releases a Damning Report on Prison Conditions Nationwide," April
Nigeria: On the Eve of 'Change,' A Transition to What?, October

South Africa

The Killings in South Africa - The Role of the Security Forces and the Response of the State, January
"Out of Sight-The Misery in Bophuthatswana," September
"Ciskei: Challenging the Fiction of Independence," December

Sudan

"Inside Al Bashir's Prisons: Torture, Denial of Medical Attention and Poor Conditions," February
"New Islamic Penal Code Violates Basic Human Rights," April
"Sudanese Human Rights Organizations," November
"Destroying Ethnic Identity and The Secret War Against the Nuba," December

Americas Watch**Argentina**

Truth and Partial Justice in Argentina, An Update, April (Also in Spanish).
Police Violence in Argentina: Torture and Police Killings in Buenos Aires, December

Brazil

Rural Violence in Brazil, February (Also in Portuguese).
"The Search for Brazil's Disappeared: The Mass Grave at Dom Bosco Cemetery," (with Physicians for Human Rights and the Committee

on Scientific Freedom and Responsibility of the American Association for the Advancement of Science), March.
Criminal Injustice: Violence Against Women in Brazil, (with the Women's Rights Project of Human Rights Watch), October.

Chile

Human Rights and the "Politics of Agreements," Chile During President Aylwin's First Year, July.

Colombia

La 'Guerra' contra las drogas en Colombia: La olvidada tragedia de la violencia política, (Spanish-language version of Americas Watch's October 1990 report), April.

Cuba

"Attacks Against Independent Associations March 1990-February 1991," February.

"Behind a Sporting Facade, Stepped-up Repression," August.

Dominican Republic

Half Measures: Reform, Forced Labor and the Dominican Sugar Industry (with National Coalition for Haitian Refugees and Caribbean Rights), March.

El Salvador

El Salvador and Human Rights: The Challenge of Reform, March.

"Extradition Sought for Alleged Death Squad Participant," August.

El Salvador's Decade of Terror: Human Rights Since the Assassination of Archbishop Romero, ("Human Rights Watch Books" series of Yale University Press), September.

"The Jesuit Trial: An Observer's Report," December.

Guatemala

"Slaying of Rights Activists, Impunity Prevails Under New Government," April.

Getting Away with Murder (with Physicians for Human Rights), September.

Haiti

"The Aristide Government's Human Rights Record" (with the National

Coalition of Haitian Refugees and Caribbean Rights), November.
Return to the Darkest Days: Human Rights in Haiti Since the Coup, (with the National Coalition for Haitian Refugees and Physicians for Human Rights), December.

Honduras

"Torture and Murder by Government Forces Persist Despite End of Hostilities," June.

Mexico

Prison Conditions in Mexico (with the Prison Project of Human Rights Watch), March.

Unceasing Abuses: Human Rights in Mexico One Year After the Introduction of Reform, September.

Nicaragua

Fitful Peace, July.

Panama

"Human Rights in Post-Invasion Panama: Justice Delayed is Justice Denied," April.

Paraguay

"New Outbursts of Violence in Land Disputes," February.

Peru

Into the Quagmire: Human Rights and U.S. Policy in Peru, September.

Puerto Rico

"Prison Conditions in Puerto Rico," (with the Prison Project of Human Rights Watch), May.

Suriname

"Human Rights Conditions on the Eve of the Election," (with Caribbean Rights), May.

Uruguay

"Judiciary Bars Steps to Identify Child Kidnapped During Military Regime," September.

Asia Watch

Afghanistan

Afghanistan: the Forgotten War, February.

"Afghanistan: Towards A Political Settlement" August.

Burma

"Burma: Time for Sanctions," February.

Cambodia

Land mines in Cambodia, September.

China

"China: Rough Justice in Beijing," January.

"China: Update on Arrests in China," January.

"China: The Beijing Trials," February.

"China: Update on Arrests in China," February.

"China: The Case of Wang Juntao," March.

"China: Chinese Workers Receive Harsh Sentences," March.

"China: Guilt By Association," March.

"China: Update on Arrests in China," April.

"China: Prison Labor in China," April.

Two Years after Tiananmen, May.

Crackdown in Inner Mongolia, July.

"China: Forced Labor Exports from China, Update #1," September.

"China: Forced Labor Exports From China, Update #2," November.

"China: Persecution after Prison," November.

Freedom of Religion in China, December.

Hong Kong

"Hong Kong: Indefinite Detention," December.

India

Human Rights in India: Kashmir Under Siege, May.

Prison Conditions in India, May.

Human Rights in India: Punjab in Crisis, August.

"India: Encounter in Philibhit," September.

Indonesia

"Indonesia: Indonesia's Salman Rushdie," April.

"Indonesia: Criminal Charges For Political Caricatures,"
May.

"Indonesia: Continuing Human Rights Violations in Aceh," June.

"East Timor: The November 12 Massacre and its Aftermath," December.

Malaysia

"Malaysia: Detainees in Sabah," October.

"Malaysia: Malaysian Government Moves to Stifle Independent Bar,"
November.

Sri Lanka

"Sri Lanka: Human Rights In Sri Lanka, An Update," March.

Tibet

"Tibet: 81 Political Prisoners held in Drapchi Prison, Lhasa," January.

Vietnam

"Vietnam: Repression of the Dissent," March.

"Vietnam: Citizens Detained For Peaceful Expression," June.

Helsinki Watch

Albania

"Albania." March.

"Albania." April. (update of March 27 report).

Bulgaria

"Destroying Ethnic Identity: Selective Persecution of Macedonians in
Bulgaria," February.

Destroying Ethnic Identity: The Gypsies of Bulgaria, June.

Czechoslovakia

Prison Conditions in Czechoslovakia, September.

Northern Ireland

Human Rights in Northern Ireland, A Helsinki Watch Report, October.

Poland

Prison Conditions in Poland, An Update. January.

Romania

Since the Revolution/ Human Rights in Romania, March.

"Romania: Aftermath to the June Violence in Bucharest." May.

Destroying Ethnic Identity: Persecution of the Gypsies in Romania, September.

Turkey

"Turkey: Five Deaths in Detention in January," February.

"Update: Two More Deaths in Detention in Turkey in January," February.

"Crackdown on Anti-War Demonstrations in Turkey," February.

"Turkey: New Restrictive Anti-Terror Law," June.

"Freedom of Expression in Turkey: Abuses Continue," June.

"Turkey: Human Rights Activist Killed; Police Shoot and Kill Three at His Funeral; Human Rights Association Attacked," July.

"Turkey: Torture, Killings by Police and Political Violence Increasing," July.

"Turkey: Fifteen Deaths During Police Detention Since January," December.

United States

"Police Brutality in the United States: A Policy Statement on the Need for Federal Oversight," Human Rights Watch, July.

Prison Conditions in the United States, November.

Soviet Union

"Pattern of Violence/Lithuania is Latest Example of Soviet Army's Use of Lethal Force," January.

Glasnost in Jeopardy/ Human Rights in the USSR, April.

Conflict in the Soviet Union: Black January in Azerbaidzhan, May.

"USSR: Continuing Violence in the Baltics," June.

Conflict in the Soviet Union: Tadzhikistan, July.

Punished Peoples of the Soviet Union: The Continuing Legacy of Stalin's Deportations, September.

United Kingdom

Restricted Subjects: Freedom of Expression in the United Kingdom, October.

Yugoslavia

"Human Rights in a Dissolving Yugoslavia," January.

"Yugoslavia: The March 1991 Demonstrations in Belgrade," May.

"Yugoslavia: Human Rights Abuses in the Croatian Conflict," August.

MIDDLE EAST WATCH

Egypt

"Government Moves to Dissolve Prominent Arab Women's Organization," September.

"Authorities Clamp Down on Dissent," February.

Great Britain

"Great Britain Holding 35 Iraqi Residents as Prisoners of War," February.

Iran

"Political Dissidents Reportedly Sentenced," September.

Iraq

Needless Deaths in the Gulf War, November.

"POWs, Wounded and Killed Soldiers in the Gulf War," March.

"The Bombing of Iraqi Cities during the Gulf War," March.

Israeli Occupied West Bank and Gaza Strip

"Truth-Telling: Killings at Temple Mount One Year Later," September.
Prison Conditions in Israel, April.

"Reuters' Gaza Correspondent Enters Fifth Week in Detention," February.

"West Bank Palestinians Under the Toughest Curfew Since 1973," January.

Kuwait

"Nowhere to Go: The Tragedy of the Remaining Palestinian Families in Kuwait," October.

A Victory Turned Sour: Human Rights in Kuwait Since Liberation, September (summary published in Arabic).

Middle East (General)

"Madrid Peace Conference: Human Rights Records of the Principal Regional Parties," October.

Morocco

"Travel Restrictions on Ex-Political Prisoners," September.

Syria

Syria Unmasked: The Suppression of Human Rights by the Asad Regime, August.

The Fund for Free Expression

"Fund Cites Persecuted Writers," May.

Off Limits: Censorship and Corruption, July.

Iran

"The Threat Against Salman Rushdie: 1,000 Days Later," November
(with the Association of American Publishers).

United Kingdom

Restricted Subjects: Freedom of Expression, September.

United States

"Freedom of Expression and the War," January.

"Managed News, Stifled Views," February.

"Secret Trials in America?," June.

"SLAPPING Down Critics," September.

"The Supreme Court and Free Speech," October.

"Muzzling Student Journalists," December.

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Nineteen ninety-one was a year in which the discourse of human rights gained greater acceptance than ever before. Defenders of national sovereignty increasingly accepted the primacy of human rights, and efforts to settle armed conflicts reflected an emerging understanding that respect for human rights is central to peace and stability. Despite these gains, however, human rights advocates faced growing challenges. The rise of exclusionary ideologies, particularly the quest for ethnic, linguistic or religious purity, has yielded a dangerous intolerance for individual liberty. At the same time, the significance of the expanding nominal acceptance of democracy is threatened by a tendency to reduce the concept to periodic elections, without the blossoming of freedoms necessary to make elections meaningful.

The Bush Administration has responded to these challenges by downgrading the significance of human rights in the formulation of U. S. policy. On isolated occasions, when other interests did not stand in the way, the Administration has defended human rights. But when competing interests have arisen — conducting business with China, fighting drug-trafficking in Peru, maintaining warm relations with Saudi oil barons, pursuing a limited vision of Arab-Israeli peace, or avoiding political embarrassment to the restored Kuwaiti Emir — human rights took a back seat at the White House.